

Appendix B

GLOSSARY OF LEGAL TERMS

The following glossary of legal terms includes terms that are used on both the civil side of the law as well as the criminal side of the law. The “definition” provided for each legal term is designed to serve as a quick reference only and not as a full and complete explanation of the meaning or multiple meanings of any word listed. Reference to these terms and definitions is not a substitute for legal advice or research about your particular case.

AB INITIO — Latin for “from the beginning,” e.g., the marriage was void *ab initio*.

ABANDONMENT — In care and protection and termination of parental rights cases, leaving a child without any provisions for support and without any person responsible for maintaining care, custody, and control because the whereabouts of the person responsible is unknown and reasonable efforts to locate the person have been unsuccessful.

ABATE — To reduce, diminish or defer a wrong, grievance or cause of action.

ABROGATE — To annul, repeal, or destroy a law, rule, or order.

ABSENTEE — See **DISAPPEARED PERSON**.

ABSOLUTE DATE — The date a divorce becomes final. A divorce becomes absolute 90 days from entry of the judgment *nisi*. Parties are not considered divorced until the judgment *nisi* becomes absolute.

ABSTRACT OF CONVICTION — See **REGISTRY ABSTRACT**.

ABSTRACT OF TITLE — A condensed history of the ownership of land, based on documents in public records, used to determine or establish present ownership.

ABUSE OF DISCRETION — See **STANDARD OF REVIEW**

ABUSE PREVENTION ORDER — See **RESTRAINING ORDER, 209A**.

ACCESSORY — One who knowingly and intentionally contributes to or aids in the commission of a crime, before or after, but not necessarily during, the commission of that crime.

ACCOMPLICE — One who participates or assists in the commission of a crime, other than the person actually doing the act constituting the crime.

ACCOUNT — In probate, an annual report on the financial status of an estate. The first account must be filed by the fiduciary within one year after the inventory is filed. It states the money received, the distribution of the money and the balance of the estate.

ACCORD AND SATISFACTION —

1. In civil cases: A method of settling a case in which a new contract, agreed to and performed by the parties, is substituted for the old contract which was the subject of the litigation and which is thereby discharged.
2. In criminal cases: An agreement between a defendant charged with a misdemeanor and the victim, often for restitution, which ends the prosecution of the case.

ACCOUNT ANNEXED — In a summary process case, the account annexed is the rent the landlord is suing for in the underlying eviction case.

ACQUIT, ACQUITTAL — See **NOT GUILTY**.

ACTION — See **CASE**.

ADA —

1. Assistant District Attorney. See **DISTRICT ATTORNEY**.
2. See **AMERICANS WITH DISABILITIES ACT**.

AD DAMNUM — Latin for “to the damage.” The amount of the plaintiff’s claim of damages in a civil case.

AD VALOREM — Latin for “according to the value.” For example, an *ad valorem* tax on an automobile is one where the amount of tax depends on the automobile’s value.

ADDITUR — The power of a trial court to increase the amount of a damages award made by a jury as an alternative to granting a new trial.

ADJOURN — To postpone or put off a trial or other legal activity indefinitely or until a later stated time.

ADJOURNMENT — The postponing or putting off of a case or session of court to another time or place.

ADJUDICATE — To determine judicially.

ADJUDICATION —

1. In criminal cases: The final judicial determination of a case by a finding of “guilty” or “not guilty” (or “delinquent” or “not delinquent” in a juvenile case) by a trial court.
2. In civil cases: The giving of a judgment or a decree.
3. In care and protection cases: The determination whether a child is in need of care and protection.

ADJUDICATORY PROCEEDING — A hearing before an administrative agency to determine rights, duties or privileges under a statute or regulations.

ADMINISTRATIVE AGENCY — A department, board, commission, division or authority of the executive branch of the government responsible for administering the law in a particular area and authorized to make regulations and/or conduct adjudicatory proceedings.

ADMINISTRATIVE HEARING OR PROCEEDING — See **ADJUDICATORY PROCEEDING**.

ADMINISTRATIVE OFFICE OF THE TRIAL COURT (AOTC) — The AOTC is headed by the Chief Justice for Administration and Management (the “CJAM”) and is responsible for both managing and providing services to the seven Departments of the Trial Court.

ADMINISTRATIVE ORDERS — Orders issued by the Administrative Office of the Trial Court, a Trial Court Department, the Appeals Court or the Supreme Judicial Court to regulate court procedures.

ADMINISTRATOR (MALE), ADMINISTRATRIX (FEMALE) — A person appointed by a court to administer the estate of a deceased person who dies intestate. In some jurisdictions, this person is referred to as a “personal representative.”

ADMINISTRATOR/RIX CTA — The administrator of a deceased person’s estate may be referred to as an administrator CTA or WWA (*cum testamento annexo*, Latin for “with will annexed”) if the decedent left a will but there is no executor/rix named in the will or if all of the executors/rixes named in the will have died, are incompetent or neglect to give a bond within thirty days.

ADMINISTRATOR/RIX DE BONIS NON — In cases where the administration of a decedent’s estate is left unfinished due to the death, removal, or resignation of the administrator/rix, a court may appoint a new person to complete the administration of the estate, called the “administrator/rix *de bonis non*.” In some jurisdictions, this person is referred to as a “successor personal representative.”

ADMINISTRATOR/RIX DBNCTA — The person appointed by the court to take the place of an executor or administrator CTA where that party has died, resigned or been removed without having fully administered the estate.

ADMINISTRATOR/RIX WWA — See **ADMINISTRATOR/RIX CTA**.

ADMISSIBLE EVIDENCE — Evidence that meets all of the requirements to be formally made a part of the record in a case and considered by the judge and/or jury in reaching a verdict.

ADMISSION TO SUFFICIENT FACTS — A form of plea in which the defendant admits that the Commonwealth can produce sufficient evidence to support a conviction on the offense charged in the criminal complaint.

ADOPTION — The act by which a person takes the child of another into his or her family and makes the child, for all legal purposes, his or her own child.

ADOPTION AGENCY — A private agency licensed and empowered by the Commonwealth to place children in pre-adoptive homes and sponsor adoptions.

ADOPTION SURRENDER — A written unconditional consent to the adoption of a child by a person (usually the parent) whose agreement to the adoption is required by law. The person giving consent relinquishes all rights to notice of any legal proceeding involving the child. The surrender must conform to G.L. c.210, § 2. An adoption surrender is not required if parental rights have been terminated.

ADOPTION AND SAFE FAMILIES ACT (ASFA) — A federal statute adopted in Massachusetts which places responsibilities on the Department of Social Services and the court to ensure that the safety of a child is of paramount concern and that a child in foster care will be moved to a permanent placement as soon as possible. The act requires the court to determine whether the Department of Social Services made reasonable efforts to prevent or eliminate the need to remove a child from its home, to determine a permanent plan for the child within twelve months of placement in foster care and to oversee the Department’s efforts to implement the permanent plan for the child. Often referred to as “ASFA.”

ADULT — Someone who is no longer a minor. In criminal cases, an adult is a person age 17 or older. In most other proceedings, an adult is age 18 or older.

ADR — See **ALTERNATIVE DISPUTE RESOLUTION**.

ADVERSARIAL PROCEEDINGS — An action involving opposing parties.

ADVERSE POSSESSION — A means of acquiring title to land belonging to another by actually, openly, notoriously, exclusively and adversely using the land without the permission of the owner for a legally fixed period of time, twenty years in Massachusetts.

AFFIANT — One who makes and signs an affidavit under penalties of perjury.

AFFIDAVIT — A written statement of fact made under penalties of perjury.

AFFIDAVIT DISCLOSING CARE AND CUSTODY PROCEEDINGS — A Trial Court form governed by Trial Court Rule IV completed by the plaintiff in any case that may affect the custody of a minor (such as a custody proceeding in the Probate and Family Court Department, a care and protection proceeding in the Juvenile Court Department, or a 209A proceeding in the District Court Department, the Boston Municipal Court Department, the Superior Court Department or the Probate and Family Court Department.) The purpose of the affidavit is to disclose any other case in any court pertaining to the minor. Often referred to as a “care and custody affidavit” or an “affidavit of disclosure.”

AFFIDAVIT OF DISCLOSURE — See **AFFIDAVIT DISCLOSING CARE AND CUSTODY PROCEEDINGS**.

AFFIDAVIT OF INDIGENCY — An affidavit, usually made on a court form, stating that the affiant’s income is below a level set by law and that the affiant is therefore unable to pay certain fees related to the case.

AFFINITY — A relationship that results from marriage rather than from blood.

AFFIRMATION (N.), AFFIRM (V.) —

1. A ruling by an appellate court that the judgment of a lower court is proper and should not be overturned.
2. A solemn and formal declaration that a statement is true, made under the penalties of perjury but not generally referring to the Deity. In certain cases, an affirmation may be substituted for an oath.

AFFIRMATIVE DEFENSE — A response to a complaint which asserts the rights of the defendant against the plaintiff.

AGENT — A person with authority to act on behalf of another, known as the principal.

AGREEMENT — A written instrument agreed to and signed by all parties in a case which addresses issues in the case and which requires the parties to do specific things in the future. It is usually incorporated in a judgment or order, which makes it enforceable by the court if a party violates it in the future.

AKA — “Also Known As.”

ALIAS — Another name a person has used or by which he or she has been known, can be used to conceal one’s true identity from others.

ALIAS EXECUTION — A duplicate of the document which records a judgment in a civil case which replaces the original document if it is lost.

ALIMONY — See **SPOUSAL SUPPORT**.

ALLEGATION — A declaration by a party to a lawsuit, made in a pleading, and stating what the party intends to prove. More generally, a claim that is yet to be proven.

ALLOWED — Sanctioned or authorized by the court, e.g., the motion was allowed.

ALTERNATE JURORS — Jurors selected in addition to the number required, who hear all of the evidence along with the regular jurors and are available to replace any regular juror who can not continue hearing the case or participate in deliberations.

ALTERNATIVE DISPUTE RESOLUTION (ADR) — A process used to resolve a dispute without litigating it in court, often referred to as ADR. Specific means of alternative dispute resolution include arbitration, case evaluation, conciliation, dispute intervention, mediation, mini-trial, summary jury trial and early intervention.

ALTERNATIVE SERVICE — A method other than personal service of notifying the defendant or respondent in an action of the complaint or petition filed. Alternative service is usually done by publishing a notice in the newspaper and by mail.

AMENDMENT — A change to a pleading or document.

AMERICANS WITH DISABILITIES ACT — A federal statute establishing the rights of individuals with disabilities.

AMICUS CURIAE — Latin for “friend of the court.” One who is not a party to a case but who is interested in or affected by its outcome and who is allowed by the court to introduce argument or file briefs to assist the court in deciding the case.

ANCILLARY ADMINISTRATION — A judicial process wherein a fiduciary is appointed to manage the assets of a deceased person who has left property in another state.

ANCILLARY SUIT OR PROCEEDINGS — A case or proceeding growing out of and supplementary to another case, such as a case seeking enforcement of a judgment.

ANNOTATIONS — Brief summaries of cases interpreting statutes. These summaries are found in annotated compilations of statutes, such as the Massachusetts General Laws Annotated.

ANNUL — To make void or of no effect. An annulled judgment or judicial proceeding has no force or authority.

ANNULMENT — An order declaring that a marriage or other agreement or contract was invalid or not legal. While a divorce terminates a legal marriage, an annulment establishes that a legal marriage never existed.

ANSWER — The pleading in which the defendant responds to the complaint of the plaintiff in a lawsuit.

ANTENUPTIAL — See **PRENUPTIAL**.

ANTIPSYCHOTIC MEDICATIONS — Drugs used to treat psychotic illnesses. Also referred to as “neuroleptics.”

AOTC — See **ADMINISTRATIVE OFFICE OF THE TRIAL COURT, CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT**.

APPEAL — A request to have the decision of a court or administrative agency reviewed and changed, either by another court or by a specialized panel.

APPEALS COURT — Created in 1972, the Massachusetts Appeals Court is a court of general appellate jurisdiction. Most appeals from the Departments of the Trial Court are entered initially in the Appeals Court; some are then transferred to the Supreme Judicial Court but a large majority are finally decided by the Appeals Court.

APPEARANCE —

1. The act of coming into court, by which the defendant submits to the jurisdiction of the court.
2. A document identifying the attorney of record. An attorney files an “appearance,” making it known to the court and the other parties that he or she is representing a specific individual.

APPELLANT — The party appealing a decision or judgment to a higher court, arguing that an error at trial requires a change in the judgment or a new trial.

APPELLATE COURT — A court which reviews lower court decisions, and has the authority to vacate, affirm or reverse them and/or return the case to the lower court for further action. In Massachusetts, the Appeals Court and the Supreme Judicial Court are appellate courts.

APPELLATE DIVISION — The Appellate Divisions of the District Court Department and the Boston Municipal Court Department hear appeals of civil cases, victim compensation cases and civil motor vehicle infraction cases. A decision of the Appellate Division can be further appealed to the Appeals Court.

APPELLEE — In a case on appeal, the party who did not appeal the lower court’s decision, and who usually argues to the appellate court that the trial judge acted correctly.

APPLICATION FOR COMPLAINT — In criminal cases, the complaining police department or civilian must apply to the clerk-magistrate for complaint alleging that a crime has been committed by the defendant. The application includes a police report or other information supporting the complaint. A show cause hearing is held and if the clerk-magistrate determines that there is probable cause to believe the crime alleged has been committed by the person named in the application, a complaint is issued and a criminal case commenced.

APPOINTMENT — The selection by the court of a person to carry out a responsibility, e.g., an appointment as guardian.

ARBITRATION — A form of alternative dispute resolution under which a neutral renders a decision after hearing arguments and reviewing evidence. The decision may be binding or non-binding.

ARRAIGNMENT — The procedure that initiates a criminal case. The defendant is informed of the specific charges and a summary of the facts alleged is generally read. If the defendant is indigent, the court appoints counsel. If bail is to be set, it is done at this hearing. In some cases, the court may hear motions or take a plea.

ARREARAGE — Money which is overdue and unpaid, often child support or rent.

ARREST WARRANT — An order issued to a law enforcement officer by a judge or clerk-magistrate, requiring the arrest of the person named.

ASFA — See **ADOPTION AND SAFE FAMILIES ACT**.

ASSENT — Approval of something already done.

ASSETS — Generally, property belonging to a person, corporation, or estate. In probate matters, all of the property available to the fiduciary for payment of debts, charges, and expenses, and for distribution to parties who are entitled to it.

ASSIGNMENT — Generally, the transfer of property or other legal rights.

ASSIGNMENT OF CASES — The system or method that a court uses to assign cases to the judges of the court.

ASSIGNMENT OF COUNSEL — If a defendant in a criminal case is found by the court to be indigent and thus unable to afford an attorney, and if the offense with which the defendant is charged could lead to incarceration, an attorney must be appointed to represent the defendant free of charge.

ASSIGNMENT OF JUDGES — The Chief Justices of the various Trial Court Departments assign judges to sit in specific sessions. These assignments are to specific courts or even to specific courtrooms. Assignments may be made in the regular course of judicial business, or to cover vacancies, retirements, vacations, unusually long or notorious cases, or to reduce backlogs at a particular court. A judge may be appointed to one division of a Trial Court Department but assigned to sit in another division of the same Department or, less frequently, assigned to a different Department by the CJAM.

ASSIGNMENT OF WAGES — See **GARNISHMENT**.

ASSISTANT REGISTER — A position limited to the Probate and Family Court. Assistant registers are appointed by the First Justice in each Division. The duties of an assistant register may vary from division to division but, in general, the courtroom duties are to call cases, swear in witnesses, keep statistics, enter exhibits, check files for trial readiness and in general keep cases before the court moving in an orderly fashion. Assistant registers also review stipulations, uncontested domestic relations and probate matters and make recommendations for approval to judges. The duties may also include advising judges, attorneys and the general public on matters of legal practice and procedure.

ATTACHMENT — A judicial order seizing property to ensure that the property is before the court and subject to its judgment. An attachment is often used to prevent the sale of property that may be needed to satisfy a judgment. If the property involved is real property, the attachment is filed in the Registry of Deeds so that anyone reviewing the title to the real property is made aware of it.

ATTEST, ATTESTATION — Signing as a witness to the signing by another of a written document.

ATTORNEY — A person admitted to the bar who is therefore qualified and licensed to represent the legal interests of another person. Also known as a “lawyer” or as “counsel.”

ATTORNEY GENERAL — The elected official who is an attorney and who represents the Commonwealth, its agencies, officers and commissions in all civil cases in which they are a party or are otherwise interested, or where the acts of departments, officers or commissions are questioned. The Attorney General also prosecutes certain criminal cases. In Massachusetts, the Attorney General is one of six constitutional officers elected statewide.

ATTORNEY-IN-FACT — A person authorized by another person to act in that other person's place. An attorney-in-fact may or may not be admitted to practice in the courts.

ATTORNEY OF RECORD — The attorney who has filed an appearance in a case and therefore bears responsibility for the handling of the case on behalf of a party.

AUDITOR — A person appointed by the court to verify and state the true financial condition of a business entity or individual.

AUTHENTICATION —

1. A procedure by which evidence is made legally admissible in a court proceeding.
2. Certification of the original or a copy of a document.

AVERMENT — Something alleged or asserted in a pleading.

BAIL — A method of ensuring that the defendant in a criminal case will appear in court for future proceedings by having the defendant or someone on the defendant's behalf deposit money with the court or agree to pay a certain amount (post surety) that is forfeited if the defendant does not appear. The issue in a bail hearing is what amount of money will reasonably assure the defendant's appearance in court during the course of the proceedings; by law, dangerousness has no role to play in a traditional bail determination.

BAIL BOND — A bond given to a court by a criminal defendant's surety, guaranteeing that the defendant will appear in court in the future.

BAIL WARNING — An advisory informing a newly charged criminal defendant that if there is an arrest or a charge for a new offense while the case is pending, revocation of bail and incarceration may result.

BAR —

1. A general term for the legal profession encompassing attorneys who have passed an examination and been licensed to appear before the court to represent others.
2. An association of members of the legal profession, e.g., the Massachusetts Bar Association.
3. The court.

BATTERING — See **DOMESTIC VIOLENCE**.

BBO — See **BOARD OF BAR OVERSEERS**.

BENCH TRIAL — The trial of a case before a judge without a jury.

BENCH WARRANT — An order issued by the judge ("from the bench") authorizing the arrest of a person for violating an order.

BENEFICIARY —

1. One who is entitled to receive benefits under a trust or a will.
2. One who is entitled to receive payments under an insurance policy.

BEQUEATH — To give personal property by a will.

BEQUEST — A gift of personal property by a will.

BEYOND A REASONABLE DOUBT — See **BURDEN OF PROOF**.

BIND — To create a legal obligation.

BIND OVER — To turn a person accused of a crime over to a sheriff or warden for imprisonment pending trial.

BIRTH RECORD OR CERTIFICATE — A formal document with a raised seal from the city or town in which a person is born recording the facts of the birth.

BOARD OF BAR OVERSEERS — The body responsible for licensing and disciplining attorneys in Massachusetts.

BOND —

1. In criminal cases: A promise or contract to do or perform a specified act or pay a penalty for failure to perform, usually guaranteed by a surety who promises to pay if the principal defaults, or by deposit of money as a cash bond. Bond is basically the same as bail in criminal cases.
2. In civil cases: A person who contracts to pay if another person defaults, a surety. The surety can then collect from the principal. Not the same as insurance.

BOSTON MUNICIPAL COURT (BMC) — The Boston Municipal Court Department (“BMC”) is one of the seven departments of the Trial Court. It has criminal jurisdiction over cases involving misdemeanors, violations of city ordinances and by-laws and over certain preliminary proceedings in cases that fall within the jurisdiction of the Suffolk Superior Court. In addition, the BMC has concurrent jurisdiction with the Suffolk Superior Court over all felonies punishable by a sentence up to five years in State Prison and other felonies where BMC jurisdiction is designated by statute. The BMC has civil jurisdiction over cases arising anywhere in Suffolk County in which monetary damages or trustee process is sought, including contract and tort actions, as well as civil cases remanded from the Suffolk Superior Court. The BMC also has jurisdiction over small claims cases, mental health and substance abuse commitments, summary process proceedings, civil motor vehicle infraction proceedings, supplementary process proceedings, unemployment compensation appeals and abuse prevention restraining orders. The BMC has its own appellate division to hear appeals from civil cases.

BRIEF — A written argument submitted to a court setting forth the facts and/or law supporting the party's case. In the appellate courts, there are four types of briefs: the appellant's brief (blue cover); the appellee's brief (red cover); the appellant's reply brief to the appellee's brief (grey cover); and briefs by any *amici curiae* (green cover). A brief may also be known as a “memorandum of law.”

BURDEN OF PROOF — The duty to prove a fact or facts in dispute.

1. In criminal cases: The prosecutor must prove “beyond a reasonable doubt” that the defendant committed the offense charged.
2. In civil cases: In most civil cases, the plaintiff must prove its case by a “preponderance of the evidence,” i.e., that it is more likely than not that the plaintiff's version of the facts at issue is correct. In some kinds of civil cases, an intermediate burden of proof - that of “clear and convincing evidence” - applies, which requires a level of proof that is more stringent than that of a “preponderance of the evidence” but less stringent than “beyond a reasonable doubt.”

BUREAU OF VITAL STATISTICS — A branch of the Department of Public Health that serves as the central repository for records of births, deaths and marriages which occurred within Massachusetts. These records are forwarded to the Bureau by the municipal clerk in the city or town where the event occurred.

BYLAW — A law enacted by a town. It has no effect outside that town.

CALENDAR — A list of all pending cases in a court. Often used interchangeably, but improperly, with docket.

C AND P — See **CARE AND PROTECTION PETITION, CARE AND PROTECTION PROCEEDINGS.**

CANONS OF ETHICS — Enforceable rules governing the professional responsibilities and conduct of attorneys, judges, clerk-magistrates, and others.

CAPIAS — Latin for “that you take.” A bench warrant for arrest issued when a defendant in a civil case or a witness in a civil or a criminal case who has been served with a summons in hand does not appear in court when required to do so.

CARE AND CUSTODY AFFIDAVIT — See **AFFIDAVIT DISCLOSING CARE AND CUSTODY PROCEEDINGS.**

CARE AND PROTECTION PETITION — A petition filed in the Juvenile Court Department or the District Court Department alleging that a minor has been subjected to abuse or neglect by his or her parents or guardian.

CARE AND PROTECTION PROCEEDINGS — Proceedings conducted by the Juvenile Court Department or the District Court Department sitting in a Juvenile Court session for the purpose of ensuring that a minor is protected against any physical, mental or emotional injury resulting from absence, neglect or abuse by the person responsible for the child's welfare, or resulting from the inability of that person to provide for the normal physical, mental, and moral development of the child.

CARI — "Court Activity Record Information." A computerized database maintained by the Office of the Commissioner of Probation containing a record of all court action related to a particular person. A CARI report lists a particular individual's involvement as a party with all of the courts of the Commonwealth. It is often confused with CORI, which is a database of "Criminal Offender Record Information" detailing the criminal histories of individual offenders maintained by the Criminal History Systems Board.

CASE — A legal dispute brought before a court. A case is also referred to as an "action," "lawsuit," or "cause."

CASE DOCKET — See **DOCKET**.

CASE EVALUATION — A process in which the parties or their attorneys present a summary of their cases to a neutral who renders a non-binding opinion of the settlement value of the case and/or a non-binding prediction of the likely outcome if the case were adjudicated.

CASE FILE — See **FILE**.

CASE LAW — Published decisions in individual cases. When issued by an appellate court, the legal principles announced in these decisions are binding authority for lower courts and must be applied in all other cases.

CASELOAD — The number of cases assigned to a judge or session.

CAUSE OF ACTION — The legal issues underlying a case that permit a court to hear it.

CERTIFICATE OF SERVICE — A signed statement by a moving party that all parties have been properly informed within the time required by court rules or orders that a motion has been filed, and have been served with a copy of the motion.

CERTIFIED COPY — A copy of a document, order or record signed and certified as an exact duplicate by the person responsible for maintaining the original.

CERTIFY — To vouch for something in writing or attest in writing to the authenticity and accuracy of a written instrument or document, or a copy of it.

CERTIORARI — Latin for "to be informed of." An order, or writ, by an appellate court directing a lower court to certify and forward the record of a case to the appellate court for review. An appeal is in some cases referred to as a "petition for a writ of *certiorari*," or "cert." The term "*certiorari*" can also refer to a civil action in the Superior Court Department to correct errors in law in administrative adjudicatory proceedings where judicial review is otherwise unavailable and the petitioner has exhausted all administrative remedies.

CHAIN OF CUSTODY — Documentation of the custody of real evidence. A person offering evidence, such as drugs or weapons, must establish where the object has been from the moment it was seized until the moment it is offered as an exhibit in court, (e.g., who carried the object from the place where it was found to the evidence locker, who signed it into the locker, who removed it from the locker and when, and who brought it into the courtroom) to ensure that the evidence has not been altered.

CHALLENGE —

1. To ask that a member of the *venire* be excused from serving on the jury. See **VENIRE**.
2. To question or dispute an action.

CHALLENGE FOR CAUSE — To ask that a member of a *venire* be excused because there appears to be a specific reason, set out in the court rule, that he or she is not legally qualified to act as a juror in the case. See **VENIRE**.

CHALLENGE TO THE ARRAY OR VENIRE — To question the qualifications of an entire panel summoned for jury duty, usually because of alleged partiality or some deficiency in the manner by which the panel was selected and summoned. See **VENIRE**.

CHANGE OF VENUE — The transfer of a case to another court in another location, either because it should have been commenced there in the first place, or for the convenience of the parties or witnesses, or because a fair trial cannot be had in the original court location.

CHARGE TO THE JURY — See **JURY INSTRUCTIONS**.

CHATTELS — Personal property as opposed to real property. See **PERSONAL PROPERTY**.

CHIEF JUSTICE — In each Trial Court Department, one judge is selected by the Chief Justice for Administration and Management to be the Chief Justice. The Chief Justice is responsible for the administration of that Court Department. The Appeals Court and the Supreme Judicial Court each have a Chief Justice as well.

CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT (CJAM) — The CJAM is appointed by the Supreme Judicial Court and is responsible for overseeing the operations of and provision of support services to each of the seven Departments of the Trial Court.

CHILD ABUSE — An intentional or neglectful physical or emotional injury to a child.

CHILD BORN OUT OF WEDLOCK — See **ILLEGITIMATE CHILD, OUT OF WEDLOCK**.

CHILD CUSTODY — The responsibility to care for and exercise control over a child. Child custody is awarded in a domestic relations or care and protection proceeding. Custody may be physical (referring to who will care for and control the actual body of the child) or legal (referring to who will make medical, legal, educational and other decisions regarding the child). One parent may have both physical and legal custody of a child; or the two can be split, with one parent having physical custody, the other legal; or one or both of physical and legal custody may be shared by both parents. It is not unusual for one parent to have sole physical custody of a child but to share legal custody with the other parent. The Commonwealth's Department of Social Services or another party, such as a guardian, may also be awarded legal and/or physical custody of a child if the parents are deemed unfit.

CHILD IN NEED OF SERVICES PROCEEDING (CHINS) — A proceeding involving a child between the ages of six and sixteen who persistently and willfully fails to attend school, fails to obey a school rule, runs away from home and/or fails to obey the lawful and reasonable commands of his or her parent or legal guardian. Often referred to as a "CHINS."

CHILD NEGLECT — The failure of the parent, guardian, or custodian of a minor to provide proper support, education, medical care, physical care, or a fit home environment for the minor.

CHILD SUPPORT — In domestic relations cases, ongoing payments made by agreement or by court order from one parent, usually the non-custodial parent, to the other parent or a guardian with custody to meet the financial needs of a child, including medical, dental, educational, and child care expenses.

CHILD SUPPORT ENFORCEMENT DIVISION (CSED) — A bureau of the Department of Revenue (DOR) that collects child support payments from those ordered by the court to make such payments and distributes them to the custodial parent. Attorneys from the CSED represent custodial parents before the court to obtain child support orders.

CHILD SUPPORT GUIDELINES — Official guidelines promulgated by the CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT, including a mathematical formula used by the court to determine an appropriate amount of child support. Both the non-custodial parent and the custodial parent's income are considered in determining child support under the Guidelines. If the amount of the order varies from the amount that would be required by the Guidelines, the judge must explain in writing the reasons for the variance.

CHINS — See **CHILD IN NEED OF SERVICES PROCEEDING**.

CITATION —

1. The court copy (original) of a “traffic ticket” is the citation, and also serves as the original complaint in a civil motor vehicle infraction case.
2. A reference to a source of legal authority in a court's decision that supports the court's opinion on a particular issue, or in a brief submitted to the court by a party to support the party's argument. Common forms of citations are to: decisions issued by other courts; statutes; regulations adopted by an administrative agency; treatises written by experts in the particular field being considered; and articles in law reviews and other journals.
3. A notice issued by the court ordering the recipient to respond regarding a pending proceeding. It provides information about the proceeding as well as the consequences of failing to appear or respond to the notice.

CIVIL — See **CIVIL ACTIONS OR LAWSUITS, CIVIL LAW**.

CIVIL ACTIONS, CASES OR LAWSUITS — Generally, non-criminal cases concerning the claim of one private individual or entity (such as a corporation) against another private individual or entity or the state to protect a private civil right or to compel a civil remedy, as opposed to a criminal case, which involves the public, represented by a prosecutor, against a private individual or entity.

CIVIL CONTEMPT — See **CONTEMPT OF COURT**.

CIVIL LAW —

1. Laws regarding the establishment, recovery, or redress of private and civil rights, as opposed to criminal laws, which define offenses against the state.
2. The body of law applied generally in civil society, as opposed to canon (church) law or military law.

CIVIL MOTOR VEHICLE INFRACTION (“CMVI”) — A violation of the motor vehicle laws, alleged in a citation pursuant to G.L. c.90C, such as a speeding or other traffic ticket. The violator may request a civil hearing before a District Court clerk-magistrate, with the right to a *de novo* hearing before a judge.

CJAM — See **CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT**.

CLAIM — See **CASE**.

CLAIMANT — One who makes a legal claim.

CLEAR AND CONVINCING EVIDENCE — See **BURDEN OF PROOF**.

CLEAR ERROR — See **STANDARD OF REVIEW**.

CLERK-MAGISTRATE — A clerk is an officer of the court who files pleadings, motions, etc., issues process and keeps records. A magistrate is a public officer with limited judicial authority. In Massachusetts, one person may serve both functions in the capacity of clerk-magistrate, as in the District Court, Boston Municipal Court, Housing Court and Juvenile Court Departments. Clerks are elected in the Superior Court Department. The Registers of the Probate and Family Courts are also elected. Clerk-Magistrates are appointed by the Governor in the District Court, Boston Municipal Court, Housing Court and Juvenile Court Departments. The Recorder of the Land Court is also appointed by the Governor.

CLERK OF COURT — The Clerk of Court in the Superior Court Department is an elected position. The Clerk of Court is an officer of the court with limited judicial authority who runs the Clerk's Office and accepts pleadings, motions, discovery, etc. for filing, issues process and maintains and preserves court records in accordance with the law.

CMR — See **CODE OF MASSACHUSETTS REGULATIONS**.

CMVI — See **CIVIL MOTOR VEHICLE INFRACTION**.

CODE — A set of regulations relating to a particular subject matter issued by an administrative agency responsible for the area regulated, such as the Building Code, or a set of statutes, such as the U.S. Code, a set of federal statutes.

CODE OF MASSACHUSETTS REGULATIONS — The collection of regulations promulgated by the administrative agencies of the Commonwealth.

CODICIL — A legally binding amendment to a will.

COLLATERAL — Generally, "by the side," supplementary.

1. In criminal cases: Money or goods pledged to insure a defendant's appearance in court.
2. In civil cases: Money or goods pledged to secure payment of a debt.
3. See **DESCENT**.

COLLATERAL CONSEQUENCES — Consequences that arise as an indirect result of conviction of a crime but not as part of the punishment imposed by the convicting court. For example, a collateral consequence of being convicted of certain crimes might be deportation or loss of one's driver's license but those consequences are imposed by agencies other than the sentencing court.

COLLATERAL ESTOPPEL — A rule providing that when an issue of fact has been determined by a judgment in one case, the issue can not be relitigated in another case between the same parties. Also called "issue preclusion."

COLLATERAL MATTERS — Matters related to but not legally relevant to the question before the court.

COMMIT — The act of sending a person to a jail, prison, mental hospital or other facility pursuant to an order.

COMMITMENT — The order by which the court directs:

1. that a person go to a prison or jail in execution of a sentence; or
2. that a person go to a hospital because of mental illness.

COMMITTEE FOR PUBLIC COUNSEL SERVICES (CPCS) — A fifteen-member body established by G.L. c.211D to oversee the provision of attorneys to indigent defendants in criminal cases and other cases in which the state is a party, including CHINS, care and protection, termination of parental rights and other child custody cases involving the Department of Social Services (CPCS represents parents and children in these cases) and mental health commitment cases (CPCS represents the person being committed). Most of the legal representation is provided by private attorneys appointed by various courts. CPCS also has staff attorneys who provide legal services to indigent parties.

COMMON LAW — A system of laws which originated in England and has evolved from early days to the present, consisting of old and accepted customs, precedents and court decisions, old English statutes and other unwritten but accepted standards. Common law is the foundation for the legal system in every state of the United States except Louisiana. In Massachusetts, the common law is still in effect except where it has been modified or repealed by statute.

COMMUNITY MEDIATION PROGRAM — A non-profit program to promote the use of mediation and related conflict resolution services by volunteers to resolve disputes, including those that come to, or might otherwise come to, the courts.

COMPETENT — Relating to evidence and witnesses in a court action, competent means to meet all of the requirements for admission into evidence. A competent witness is legally fit and qualified to give testimony in court. A competent document is one that is admissible.

COMPETENT COURT — A court that has lawful jurisdiction over the case before it. Also referred to as a “court of competent jurisdiction.”

COMPETENT TO STAND TRIAL — In order to be found mentally competent to stand trial, a defendant must be able to understand the nature and object of the proceedings, be able to consult with an attorney and be able to assist in preparing a defense. A person who is found incompetent to stand trial may be committed to a mental health facility.

COMPLAINANT —

1. In civil cases: One who makes a complaint, often referred to as the plaintiff.
2. In criminal cases: One who initiates the prosecution by filing an application for criminal process.

COMPLAINT —

1. In civil cases: The first paper, or pleading, filed with the court, in which the plaintiff gives the reasons for the suit.
2. In criminal cases: A written accusation, made under the penalties of perjury, that a felony, misdemeanor, or ordinance violation has been committed and that probable cause exists to believe that the named person is guilty of the offense. A criminal complaint may be filed by the police or by a private party who files an application for criminal process with the clerk-magistrate.

COMPLAINT FOR MODIFICATION — A complaint filed to change an existing order or judgment due to a material and substantial change in circumstances. For example, complaints for modification are frequently used in domestic relations cases to revise custody arrangements as the children age and their needs change.

CONCILIATION — A process in which a neutral assists parties to settle a case by clarifying the issues and assessing the strengths and weaknesses of each side of the case, and, if the case is not settled, explores the steps which remain to prepare the case for trial.

CONCURRENT JURISDICTION — The authority of more than one Trial Court Department to hear the same type of case at the choice of the litigants. For example, some crimes can be prosecuted in either the District Court or the Superior Court Departments. Summary process cases can be heard in the District Court or the Housing Court Department or, in some cases, the Superior Court Department. Termination of parental rights hearings can be held in the Juvenile Court Department, the District Court Department sitting in a Juvenile Court session or the Probate and Family Court Department.

CONCURRENT SENTENCES — Two or more sentences of imprisonment served simultaneously in cases where a criminal defendant is convicted of more than one offense and sentenced to separate terms of imprisonment for each offense. The defendant is entitled to release from prison at the expiration of the longest term specified.

CONCURRING OPINION, CONCURRENCE — An opinion by a judge who agrees with the decision reached in a case, but who would base the decision on reasons different from those of the majority of judges considering the case.

CONDEMNATION —

1. The process by which private real property is taken for public use without the owner's consent but with just compensation, pursuant to an order; a forced sale of property to the state or a subdivision of the state for public use; a taking by eminent domain.
2. The destruction of real property or other property ordered for public health or safety reasons. In such cases, there is no taking for a public use and thus there is no compensation.

CONFESSION — A voluntary statement, either oral or written, in which a person admits to committing a criminal offense. The statement must include all of the elements of the offense, or it is not a confession but an admission.

CONSANGUINITY — A relationship created by blood. People who descend from a common ancestor, like siblings or cousins, have consanguinity.

CONSECUTIVE INTERPRETATION — A process of converting speech from one language to another in which the speaker of language A speaks, then pauses while the interpreter converts what was said to language B, and vice-versa.

CONSECUTIVE SENTENCE — In cases where a criminal defendant is sentenced to separate terms of imprisonment for each of multiple offenses, a consecutive sentence is one that will be served after another sentence has expired.

CONSERVATOR — A person with the legal duty and power to manage and protect the estate, or property, of another individual who is legally incapacitated by reason of mental weakness, mental retardation or physical incapacity.

CONSIDERATION — See **CONTRACT**.

CONSPIRACY — An agreement to commit a crime or do a lawful act in an illegal manner. Conspiracy is a crime in Massachusetts.

CONSTABLE — An officer of a municipality who serves notices of process, such as summonses.

CONSULTATION FEE — Sometimes a lawyer will charge a fee to meet with a potential client to discuss the facts of his or her case. This is an opportunity for the lawyer to decide whether or not to take the case and for the potential client to decide if he or she wishes to hire the lawyer.

CONTEMNOR — One who commits an act in contempt of court.

CONTEMPT OF COURT — An act or failure to act that violates an order, interferes with the functioning of the court, or disrespects the authority of the court. Contempt of court can be civil or criminal, both of which can involve fines and/or jail terms. Civil contempt sanctions are generally imposed to compel a contemnor to comply with the court's directives. Criminal contempt sanctions are generally imposed to punish past misconduct.

CONTESTED — A case, or a motion or other issue within a case, which is opposed, *i.e.*, the parties cannot reach an agreement regarding it.

CONTINGENT FEE — This type of charge is often used in personal injury cases. Under this type of fee arrangement, the lawyer is paid a certain percentage of the money received by the client if the client wins or settles his or her case. If the client loses his or her case, then the lawyer does not receive a fee. However, the client may still be responsible for the payment of costs. In Massachusetts, written fee agreements are required in contingent fee cases.

CONTINUANCE — Postponement of an action pending in court.

CONTINUANCE WITHOUT A FINDING (CWOFF) — In a criminal case, if a judge finds there is enough evidence to support a finding of guilty, the judge may continue the case for a certain period of time without making the guilty finding. The court will dismiss the charges without a finding of guilt at the end of that period if the defendant complies with the conditions imposed during that period. Often referred to as a "CWOFF" (pronounced "quoff").

CONTRACT — An agreement between two or more parties in which one party agrees to do or not do a particular thing in exchange for the other party's agreement to do or not to do a particular thing, called the consideration, usually a payment of money. The agreement may be stated in an oral or written exchange of promises or implied by the parties' actions.

CONVERSION — The wrongful exercise of ownership or control over goods which belong to another.

CONVEY — To transfer title to property from one person to another.

CONVEYANCE —

1. The transfer of a title to property from one person to another.
2. Documents which effect the transfer of title to property.

CONVICT —

1. (v) To find one guilty of a crime.
2. (n) One who has been convicted of a crime.

CORI — Criminal Offender Record Information. Data maintained by the Criminal Offender History Board detailing an individual's criminal history, including charges and dispositions. It is often confused with a CARI report, which lists a particular individual's involvement as a party with all of the courts of the Commonwealth. The CARI ("Court Activity Record Information") database is maintained by the Office of the Commissioner of Probation.

CORI REPORT — See **CORI**.

CORONER — See **MEDICAL EXAMINER**.

CORPUS DELICTI — Latin for "the body of the crime." The *corpus delicti* is what the prosecutor must prove (that a crime was committed) before introducing a confession or admission into evidence.

COSTS — Many cases involve expenses in addition to legal fees. These expenses are often referred to as “costs” and include such things as filing fees, service of process, deposition costs, expert witness fees, photocopy and telephone expenses, medical records, etc.

COUNSEL — An attorney; one who gives advice, especially legal advice.

COUNTERCLAIM — A claim that the defendant asserts against the plaintiff in a civil case.

COUNTY — A geographical or political unit within a state. There are fourteen counties in Massachusetts: Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk and Worcester.

COURT ACTION RECORD INFORMATION — See **CARI**.

COURT ADMINISTRATOR — Each Department of the Trial Court has a Court Administrator who works with the Chief Justice of the Department to administer that Department.

COURT- CONNECTED DISPUTE RESOLUTION SERVICE — See **DISPUTE RESOLUTION SERVICE**.

COURT OFFICER — Together with the judge, the Court Officer is responsible for maintaining order in the courtroom.

COURT RECORDER — See **REPORTER**.

COURT REPORTER — See **REPORTER**.

COURT RULES — Rules adopted by a court to govern its procedures. In Massachusetts, rules are issued by the Supreme Judicial Court, the Appeals Court, the Trial Court and each of the Trial Court Departments. Rules of court must be approved by the Supreme Judicial Court before they become effective.

COURT STENOGRAPHER — See **REPORTER**.

CPCS — See **COMMITTEE FOR PUBLIC COUNSEL SERVICES**.

CRIME — A violation of criminal law, punishable by imprisonment and/or a fine.

CRIMINAL — One who has been convicted of a crime.

CRIMINAL CASE — A lawsuit between the Commonwealth or the federal government (represented by the District Attorney, the Attorney General, U.S. Attorney or, in some cases in the Housing Court Department, an inspector or attorney from a government agency) and a person or corporation as defendant, to determine whether the defendant has violated a criminal law.

CRIMINAL CONTEMPT — See **CONTEMPT OF COURT**.

CRIMINAL LAW — The body of law that forbids certain actions or conduct and provides for the punishment of those who engage in the forbidden actions or conduct.

CRIMINAL OFFENDER RECORD INFORMATION — See **CORI**.

CROSS-APPEAL — In a case on appeal, the appellee’s request that the court review aspects of the lower court’s decision that were not raised by the appellant, seeking to reverse, vacate, or modify those aspects, while affirming the rest of the decision.

CROSS-APPELLANT — See **CROSS-APPEAL**.

CROSS-CLAIM, CROSS-COMPLAINT — In a civil lawsuit involving multiple plaintiffs or multiple defendants, a claim brought by one plaintiff against another plaintiff, or by one defendant against another defendant.

CROSS EXAMINATION — The questioning of a witness at trial or deposition by a party other than the party who called the witness. Cross examination is designed to test the truthfulness of the witness's testimony and the credibility of the witness, or to further develop the testimony.

CUSTODIAL PARENT — The parent having physical custody of a child.

CUSTODY — Care and control of a thing or person. A person who is "in custody" is imprisoned or otherwise physically detained. "Child custody" refers to who has the legal right to make decisions regarding a child's care and/or who has physical control over the child.

CWOF — See **CONTINUANCE WITHOUT A FINDING**.

DA — See **DISTRICT ATTORNEY**.

DAMAGES — Money paid to a person who has been injured or damaged by the actions of another person.

DANGEROUSNESS HEARING — A hearing held in the District Court Department or Superior Court Department under GL c.276, §58A, during which the prosecutor moves, based on dangerousness, to hold the defendant without bail (requesting an order of pretrial detention) or release of the defendant only on specified conditions (*e.g.*, ankle bracelet, curfew, etc.) because the defendant is dangerous. The prosecutor may ask for pretrial detention or release on conditions only when the defendant is charged with certain crimes, including a felony that involved the use or attempted or threatened use of physical force, a domestic violence offense, a drug offense with a mandatory minimum sentence of three or more years in prison, the crime of intimidation of a witness, and certain repeat motor vehicle offenses.

DEATH CERTIFICATE — The official document, with a raised seal, prepared by the city or town where the decedent lived, recording the facts of death.

DE BONIS NON — See **ADMINISTRATOR DE BONIS NON**.

DE NOVO — Latin for "anew." To start over from the beginning. For example, a trial *de novo* is a trial anew or a new trial. A trial *de novo* is usually either (1) ordered by an appellate court in a case where the trial was so flawed that the damage can not be corrected or (2) on appeal from a decision by a clerk-magistrate, to a judge, as in a CMVI or small claims case. Prior to July 1, 1994, a defendant in a criminal case heard by a judge in the District Court Department was entitled to a trial *de novo* before a jury of six if the defendant was not satisfied with the judge's verdict. Massachusetts now has a "one trial" system in criminal cases which requires the defendant to choose a bench trial or a jury trial at the outset and eliminates the right of the defendant who chooses a bench trial to be retried without a showing of some fault in the original trial.

DECEDENT — A person who has died.

DECEDENT'S ESTATE — Property that was owned by a person at the time of his or her death.

DECLARATORY JUDGMENT — A judgment of a court determining the rights of the parties or giving the court's opinion on a legal point, without ordering that anything be done. A declaratory judgment is usually requested before the happening of (and to prevent) any specific act which could result in a claim for damages.

DECREE — A court judgment. A final decree is one fully and finally disposing of a case; an interlocutory decree is preliminary in nature, determining some issue in the case but not the ultimate question involved.

DEED — A document signed by the grantor transferring title to or ownership of real property to another (the grantee).

DEFAMATION — The deliberate and malicious injury of the reputation of another.

DEFAULT — A failure to do what ought to be done, *e.g.*, when a defendant in a civil case does not file an answer within the time allowed, or when a defendant in a criminal case fails to appear for a hearing in the case.

DEFAULT JUDGMENT — A judgment entered when the judge grants the plaintiff's request without hearing from the defendant due to a failure by the defendant to do what ought to have been done, *e.g.*, when a defendant in a civil case does not file an answer within the time allowed.

DEFAULT WARRANT — A warrant for the arrest of a defendant who has failed to appear for a hearing in a criminal case. See also, **CAPIAS**.

DEFENDANT —

1. In civil cases: the person against whom a lawsuit is brought.
2. In criminal cases: the person against whom a criminal charge is brought.

DEFENSE ATTORNEY — The attorney representing the defendant.

DELIBERATE, DELIBERATION —

1. In criminal cases: The weighing of evidence by a jury to determine whether a defendant is guilty.
2. In civil cases: The weighing of evidence by a jury to determine whether a defendant is liable and, if so, what damages are appropriate.

DELINQUENCY PROCEEDINGS — Proceedings to decide whether a child between the ages of seven and seventeen violated a law of the Commonwealth or a city ordinance or town bylaw. G.L. c.119, §§52-63. Delinquency proceedings are conducted by the Juvenile Court Department or, in some counties, the District Court Department. The juvenile is afforded all of the legal and procedural protections that an adult would be given if charged with the same offense. However, juvenile delinquency proceedings are private and sentencing varies from that in adult proceedings.

DENIAL —

1. A refusal by a court to grant a request presented in a petition or motion.
2. In pleadings, an assertion that the allegations of the opposing party are untrue.

DEPARTMENT OF CORRECTION (DOC) — The Massachusetts administrative agency responsible for the operation of the state prison system.

DEPARTMENT OF MENTAL HEALTH (DMH) — The Massachusetts administrative agency responsible for setting the standards for the operation of mental health facilities and community residential programs and for providing clinical, rehabilitative and supportive services for adults with serious mental illness, and children and adolescents with serious mental illness or serious emotional disturbance.

DEPARTMENT OF REVENUE (DOR) — The Massachusetts administrative agency empowered to collect taxes and aid in the collection of child support through its Child Support Enforcement Division. The Department of Revenue has entered into a cooperative agreement with the Trial Court for the collection of child support.

DEPARTMENT OF SOCIAL SERVICES (DSS) — The Massachusetts administrative agency responsible for protecting a minor from abuse and/or neglect. DSS has the authority to remove children from a home immediately if it believes they are in danger. DSS can ask the Juvenile Court Department or District Court Department in a care and protection proceeding to place the child in the custody of the Department of Social Services. DSS may also seek to terminate the parents' right to the child and begin adoption proceedings in the Juvenile Court Department or the Probate and Family Court Department.

DEPARTMENT OF YOUTH SERVICES (DYS) — The Massachusetts administrative agency responsible for providing a comprehensive and coordinated program of delinquency prevention and other services to delinquent children and youths referred to the DYS by the court, including operating detention facilities for delinquent minors.

DEPONENT — One who gives a deposition.

DEPOSITION — A method of pretrial discovery in civil cases. During a deposition, the deponent is required to give oral answers to questions under oath. Most depositions are taken without court supervision; the deponent is usually questioned by an attorney for one of the parties. At the deposition, a transcript or videotape, or both, is made of the deponent's testimony. The transcript or videotape may be used to support various pretrial motions, or admitted into evidence at trial in cases where the deponent is unable to be present in court. Depositions may also be used to impeach the testimony of a witness at trial.

DESCENT — The passing of ownership of an estate by inheritance rather than by purchase.

1. Lineal descent: Descent in a direct line, as from grandfather or -mother, to father or mother, to son or daughter, etc.
2. Collateral descent: Descent in a collateral or oblique line; that is, up to the common ancestor and then down from him or her, as from brother to brother, or between cousins.

DEVISE —

1. (v) To give real property in a will.
2. (n) A gift of real property made in a will.

DEVISEE — A person given real property under a will.

DICTUM/DICTA — Discussion in a court opinion that is not strictly necessary to support or justify the result. The appellate court and lower courts bound by the appellate court's decision are free to disregard the discussion in subsequent cases.

DILATORY MOTION — A motion made for the purpose of delaying the proceedings.

DIRECT EXAMINATION — Examination of a witness by the party who called the witness.

DIRECTED VERDICT — In a civil jury trial, the judge may grant the defendant's motion to take the decision out of the hands of the jury and enter a judgment against the plaintiff if, after all of the plaintiff's evidence has been presented, there is insufficient evidence to support the plaintiff's claim.

DIRECTED VERDICT OF NOT GUILTY — A verdict issued by a judge at the conclusion of the Commonwealth's case or of an entire criminal jury trial when the District Attorney has not presented sufficient evidence to convict the defendant. A directed verdict may not be granted to the prosecutor in criminal cases.

DISAPPEARED PERSON — A person who has been absent from his or her place of residence, whose whereabouts are unknown by the person most likely to know his or her whereabouts and who has not communicated with that person, for at least seven continuous years. Also known as an "absentee."

DISCOVERY — The process of gathering and preserving evidence prior to trial. Methods of discovery include the deposition, interrogatories, request for admissions and production of documents, as provided for in the Massachusetts Rules of Civil Procedure.

DISINTERESTED PARTY — A person having nothing to gain or lose in the outcome of an action or proceeding.

DISMISS — To order a case or prosecution to be terminated; to refuse to hear it further.

DISMISSAL — An order or judgment deciding a case in favor of the defendant by terminating it without a trial. A dismissal "with prejudice" forever prevents the plaintiff in a civil case or the government in a criminal case from bringing a new case on the same claim or criminal allegations; dismissal "without prejudice" disposes of the particular case before the court but a new case may be brought in the future based on the same claim or criminal allegations.

DISPOSITION — The outcome of a case, whether by dismissal, plea and sentence, settlement, verdict or judgment.

DISPUTE INTERVENTION — A process used in the Probate and Family Court and in the Housing Court in which a neutral identifies the areas of dispute between the parties and assists in the resolution of differences.

DISPUTE RESOLUTION SERVICE — Any process in which an impartial third party is engaged to assist in the process of settling a case or otherwise disposing of a case without a trial, not including a pretrial conference, an early intervention event, a screening, a trial or an investigation. When the service is provided as a result of referral by a court, it is called "Court-Connected Dispute Resolution Service."

DISQUALIFICATION —

1. Any interest which may impair or appear to impair the ability of a judge to decide a case in a fair and impartial manner will disqualify the judge from hearing the case. Disqualification may be *sua sponte* or it maybe done on the motion of a party to the case. Also referred to as "recusal."
2. In contrast to a privilege, people in some kinds of relationships, such as that of husband and wife, are disqualified from testifying against one another and may not do so even if both of them wish it.

DISSENTING OPINION — An opinion explaining why a judge disagrees with the holding of the majority of the court.

DISTRIBUTE — One who receives property from a fiduciary (but not a creditor or purchaser); a beneficiary taking through a trustee.

DISTRIBUTION — The division of the residue of an estate by court order or by a fiduciary, after the payment of the debts and charges.

DISTRICT ATTORNEY — In Massachusetts, a public officer elected to prosecute criminal cases on behalf of the people of the Commonwealth. Also referred to as “DA” or the “prosecutor.” Most cases are actually tried by Assistant District Attorneys, or ADAs, who may be referred to as “the DA” or “the Commonwealth”.

DISTRICT COURT DEPARTMENT — The judges of the District Court Department of the Trial Court hear criminal, civil, housing, juvenile, mental health and other types of cases, including all misdemeanors; felonies punishable by up to five years in state prison and some more serious felonies; all violations of city and town ordinances; juvenile matters in parts of the state not yet served by a division of the Juvenile Court; tort and contract cases; small claims cases; civil motor vehicle infractions; inquests; mental health and substance abuse commitments; 209A restraining orders; eviction cases (concurrently with the Housing Courts in those areas of the state where Housing Courts sit) and other proceedings. Each division of the District Court handles cases from the specific group of cities and towns that are within the court’s jurisdiction.

DIVERSION PROGRAM — A program designed to remove criminal offenders from official processing to a less formal, less adversarial, more community-based setting.

DIVISION — The geographical or political unit within which a court has venue or personal jurisdiction over the parties. For example, the Probate and Family Court and the Superior Court Departments each have fourteen Divisions, one for each county in the Commonwealth. The District Court Department has sixty-nine divisions, each covering a specific geographic area. The Housing Court Department has five divisions, the Juvenile Court Department has eleven divisions, and the Land Court and the Boston Municipal Court Departments have one division each.

DIVISION OF ASSETS — A judgment which divides marital property in connection with a divorce.

DIVORCE — The legal termination of a marriage.

DOC — See **DEPARTMENT OF CORRECTION**.

DOCKET — A written list of all important acts done in connection with the processing of an individual case. This is properly called the “case docket” and is often improperly used interchangeably with “calendar.”

DOMESTIC ABUSE — See **DOMESTIC VIOLENCE**.

DOMESTIC RELATIONS ACTION OR CASE — A legal action or case involving family issues such as divorce, annulment, paternity, child support, spousal support, custody of a minor, or visitation.

DOMESTIC RELATIONS PROTECTIVE ORDER (DRPO) — A restraining order in a domestic relations matter, issued pursuant to G.L. c.208, §§18, 34(b); c.209,§32; or c.209C, §§15, 20. Similar to a 209A restraining order.

DOMESTIC VIOLENCE — A pattern of sexual, physical, emotional and/or financial abuse, perpetrated with the intent and result of establishing and maintaining control over an intimate partner. Domestic abuse may include both criminal and non-criminal acts, such as hitting, choking, kicking, shoving, scratching, biting, raping, kidnapping, threatening violence, stalking, destroying property, or attacking pets. The abuse may be directed at people other than the intimate partner (e.g., children) for the purpose of controlling the partner. Also referred to as “domestic abuse,” “intimate partner violence,” or “battering.”

DOMICILE — A person’s legal home. The permanent home to which a person, when absent, always intends to return.

DOR — See **DEPARTMENT OF REVENUE**.

DOUBLE JEOPARDY — The unconstitutional practice of putting a person at risk of being convicted and sentenced more than once for the same criminal offense.

DSS — See **DEPARTMENT OF SOCIAL SERVICES**.

DUCES TECUM — Latin for “bring with you.” On a subpoena, it means that the person subpoenaed must bring records or other specified material into court or to a deposition.

DUE PROCESS (OF LAW) — The fundamental rules that guarantee “fair play” in the conduct of legal proceedings, such as the right to notice and a hearing, the right to an impartial judge and jury, the right to present evidence on one’s own behalf, the right to confront one’s accuser, the right to be represented by an attorney, etc.

DURABLE POWER OF ATTORNEY — See **POWER OF ATTORNEY**.

DYS — See **DEPARTMENT OF YOUTH SERVICES**.

EARLY INTERVENTION — A compulsory, judicially supervised event, early in the life of a case, with multiple objectives relating to both the scheduling of litigation and the selection of dispute resolution services.

EASEMENT — The right to use another’s land for a specific limited purpose, such as the right to use a driveway or to lay utility lines. Another type of easement arises when one parcel of land is separated from a road by a second parcel and access to the road is obtained by way of an easement across the second parcel, giving the owner of the first parcel the right to cross the second parcel to reach the road. Easements are usually set forth in a deed or other document.

EMANCIPATION — The process by which an individual who is under the power and control of another, is rendered free of the other’s control. Most commonly refers to minors being emancipated from the custody of their parents.

EMINENT DOMAIN — The right of the state, including a subdivision of the state like a city or a town, to take private property for public use. Under the Constitution, any taking of private property by the state requires adequate compensation to the owners of the property.

EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) — A federal law, one section of which controls how an employer (or former employer) may divide an individual’s interest in a retirement plan. Plans which qualify for special treatment under ERISA and other tax laws are called “qualified plans”. In general, the plan benefits may not be assigned to anyone other than the employee (or former employee). One major exception is that the benefits may be transferred to the employee’s spouse pursuant to a judgment of divorce if the divorce decree includes a qualified domestic relations order.

EN BANC — French for “full bench”. Although most appeals are heard by the single justice or by a panel of justices, in some unusual situations, all of the justices of the Appeals Court or the Supreme Judicial Court sit at once, or *en banc*, to hear and decide a case.

ENJOIN — To forbid or restrain.

EQUAL PROTECTION OF THE LAW — The 14th Amendment to the U.S. Constitution guarantees that “no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness.” *Black’s Law Dictionary*, 6th Ed.

EQUITY —

1. The value of property minus the total liens and encumbrances.
2. A system of legal principles and remedies in civil cases that originated in England and survives in the modern U.S. Historically, there were two distinct courts in England - courts of law and courts of equity. Courts of law could award monetary damages in civil cases, but could give no other relief. A party seeking relief other than monetary damages had to turn to a court of equity, which could grant injunctions, divorces, relief from creditors in bankruptcy, etc. There are no longer separate courts of law and equity and equitable relief is available, to a greater or lesser extent, in all Massachusetts courts. However, injunctions are still generally considered to be granted “in equity,” while damages are considered remedies “at law.” Different legal principles still apply to law and equity actions, and a few procedural distinctions survive, most notably the absence of a right to a jury trial in cases seeking only equitable relief.

ERISA — See **EMPLOYEE RETIREMENT INCOME SECURITY ACT**.

ESCHEAT — The transfer of a decedent’s estate to the State when a person dies leaving no heirs.

ESTATE —

1. The interest a person has in real property or personal property. For example, property that was owned by a person who has died is referred to as a decedent’s estate. Property held in trust for the benefit of another is a trust estate. The property of a person or corporation that has declared bankruptcy is an estate in bankruptcy or bankrupt estate.
2. The assets of a decedent or other person subject to administration under the authority of a court.

ESTOPPEL — The rule that a litigant may not make a claim or take a position which is inconsistent with the litigant’s prior conduct. For example, a seller claiming the right to sell a piece of land can not later claim a lack of authority to sell that land in a subsequent lawsuit.

EVICTIION — The process by which a tenancy is terminated by a landlord and the tenant removed from rental property.

EVIDENCE — Testimony, documents, physical objects, etc., accepted by a court for the purpose of proving or disproving facts relevant to a case.

EVIDENTIARY HEARING — A hearing at which evidence is presented, as opposed to a hearing at which only matters of law are addressed.

EX PARTE — Latin for “one side only.” Involving only one party to a case, without prior notice to any other party. *Ex parte* actions are generally allowed only in emergency situations.

EX PARTE COMMUNICATION — A communication between the court and one party to a case, made without prior notice to any other party.

EX PARTE INJUNCTION — An injunction issued upon the request of one party to a case, without prior notice to any other party.

EX PARTE MOTION — A motion made to the court by one party to a case without prior notice to any other party.

EX PARTE ORDER — A temporary order entered by the court without notice to the other side, usually on an emergency basis. An *ex parte* order is typically valid until the other side has an opportunity to appear before the court.

EX POST FACTO — Latin for "after the fact." An *ex post facto* law makes an act criminal retroactively and is unconstitutional under both the U.S. and the Massachusetts Constitutions because it inflicts punishment for acts that were not illegal when committed.

EXAMINE — In court, to question a witness.

EXCLUSIVE JURISDICTION — The power of a court over an action or person to the exclusion of all other court departments.

EXCULPATORY EVIDENCE — Evidence tending to prove that a defendant is not guilty or not liable as charged or alleged.

EXECUTE — To carry out, complete or dispose of according to law.

EXECUTION — The legal paper that allows one to enforce a judgment.

1. An order issued by the court to authorize a process-server to seize or take possession of real or personal property to be sold to pay a judgment.
2. The carrying out of some act or course of conduct to its completion. For example, execution of a civil judgment is the carrying out of the final judgment of the court by obtaining possession of that which the judgment has awarded.

EXECUTION OF AN INSTRUMENT — The signing, sealing and delivery of a written instrument or document.

EXECUTION OF A SENTENCE — The carrying out of the sentence or punishment ordered by the court in a criminal case, especially a death sentence. (There is no death penalty in Massachusetts.)

EXECUTOR (MALE), EXECUTRIX (FEMALE) — A person named in a will to carry out its terms, that is, to execute the will. In some jurisdictions, this person is called a "personal representative."

EXHAUSTION OF REMEDIES — The rule that a party can not appeal the decision of a lower court or an administrative agency to a higher authority until the party has used all of the procedures available in the lower court or agency to obtain the relief desired.

EXHIBIT — A document, object, or other material admitted as evidence during a trial or hearing.

EXONERATE — To free from suspicion; to show someone to be free of guilt.

EXPERT WITNESS — See **WITNESS**.

EXPUNGE — To destroy or obliterate records - including criminal records - in files of any type, including computer files. Records that have been expunged are treated as if they never existed.

EXTRADITION — The formal process of delivering a person found in one jurisdiction to the authorities of another jurisdiction where that person has been accused or convicted of a crime. Also known as "rendition."

EXTRAORDINARY MEDICAL TREATMENT — Highly intrusive medical treatment.

FAMILY LAW FACILITATOR — A lawyer working in the Probate and Family Court Department who may be available to assist financially disadvantaged parties in preparing pleadings and explaining court procedures.

FAMILY SERVICE OFFICER — See **PROBATION OFFICER**.

FAULT — See **GROUND FOR DIVORCE, NO FAULT DIVORCE**.

FEE-GENERATING APPOINTMENT — An appointment by a court that will generate a fee for the person appointed, paid either by the court or by the party involved, such as an appointment as guardian *ad litem*.

FELONY — Any crime punishable by imprisonment in a state prison, although the specific statute may allow for an alternative sentence to a House of Correction. Only the Superior Court Department has the authority to order imprisonment in a state prison. The District Court Department has the jurisdiction to hear certain felony cases (those punishable by a maximum of five years or less in state prison and those listed in G.L. c.218, §26), but only has authority to sentence a defendant to a maximum of two and a half years in a House of Correction. The Superior Court Department has jurisdiction over all other felony cases. The District Attorney decides in which court to bring a case when both have jurisdiction.

FID CARD — See **FIREARMS IDENTIFICATION CARD**.

FIDUCIARY — A person or institution responsible for managing money or property for the benefit of another. A fiduciary is held to a high standard of care in carrying out this responsibility. Examples of fiduciaries include administrators, conservators, executors, guardians and trustees.

FILE, FILING — As a verb, the act of submitting the legal documents pertaining to a suit to the Clerk-Magistrate, Recorder or Register of the court. The original document filed may be referred to as a "filing" and the entire collection of documents filed in the case as the "case file."

FILING FEES — Money which must be paid to the office of the Clerk-Magistrate, Recorder or Register at the time a civil action is filed, unless waived for people who are indigent.

FINAL ACCOUNT — A final report of the assets, disposition of assets and liabilities of an estate, after all distributions have been made. The court then enters a decree approving such distribution.

FINAL DECREE — A decree in a case for which no future action is anticipated, settling all pending issues.

FINANCIAL STATEMENT — A form summarizing a party's income and expenses, assets, liabilities and health insurance, signed by the party under the penalties of perjury and certified by an attorney, if the party is represented by an attorney.

FIREARMS IDENTIFICATION CARD — A card issued by the chief of police in the holder's hometown authorizing the holder to own and possess firearms. Often referred to as an "FID card."

FIRST JUSTICE — The judge designated to assume administrative responsibilities within a court. Also known as the "Presiding Justice."

FIRST SESSION — A court session that handles the initial steps in a case, administrative matters and/or emergencies. For example, a first session in the Probate and Family Court Department may handle emergency and *ex parte* matters, 209A cases, etc. A first session in the District Court Department may handle arraignments, calling of the list, referral of cases to other sessions, emergencies such as commitments for mental illness and 209A orders, etc.

FKA — "Formerly Known As."

FLAT OR FIXED FEE — This type of fee often applies to routine legal matters such as a simple will or uncontested divorce. If a client agrees to a fixed fee, he or she should find out precisely what is included and what is not. There may be additional costs.

FORECLOSURE — See **MORTGAGE**.

FOREIGN JUDGMENT — A judgment issued by a non-Massachusetts court.

FOREIGN SUPPORT ORDER — A support order issued by a non-Massachusetts court.

FOREIGN WILL — The will of a decedent whose residence is outside Massachusetts.

FORUM — A court or the jurisdiction where a court sits.

FORUM *NON CONVENIENS* — Latin for “inconvenient forum.” A legal doctrine allowing a court to refuse to exercise its jurisdiction in a case because the convenience of the parties and/or the interests of justice would be better served if the case were tried in another court.

FOSTER CARE REVIEW — A periodic review by a Foster Care Review Panel to consider the necessity and appropriateness of services provided to a child in the legal custody of the Department of Social Services and to the child’s family, and to determine whether the tasks outlined in the service plan for the parents, child, and Department of Social Services social worker have been fulfilled.

FOSTER CARE REVIEW PANEL — A panel conducting foster care reviews under the auspices of the Department of Social Service’s Independent Foster Care Review Unit.

FOSTER HOME — A home licensed by the Department of Social Services for the temporary board and care of abused, neglected or delinquent children.

FRAUD — The intentional communication of an untruth for the purpose of deceiving others in order to deprive them of property, induce them to surrender a legal right or injure them in some other way.

FUGITIVE — One who flees in an attempt to evade the consequences of a crime.

FULL FAITH AND CREDIT — A court’s constitutional obligation to recognize and enforce orders, decrees, and judgments issued by the courts of other U.S. jurisdictions.

GL — See **MASSACHUSETTS GENERAL LAWS**.

GARNISHMENT — An order to take part of a debtor’s wages or other money before the debtor receives the money to pay an unpaid judgment obtained by a creditor. In many cases, the creditor is a custodial parent seeking child support from a non-custodial parent. Also referred to as a “wage assignment.”

GENETIC MARKER TEST — A scientific test, commonly done on a sample of saliva from the inside of the cheek, to test the genetic similarities between a child, the child’s mother and the alleged father of a child, to help the court determine paternity.

GOVERNOR’S WARRANT — A warrant authorizing the taking into custody of a person who has fled from one state to another to avoid prosecution or punishment for a crime.

GRAND JURY — A group of citizens that hears evidence relating to criminal complaints and accusations. The evidence is presented secretly by the prosecutor alone. The grand jury issues an indictment if satisfied that there is probable cause to believe that a crime was committed, and that the accused committed that crime.

GRANDPARENT VISITATION — The court-ordered right of grandparents to visit a grandchild whose custodial parent is not their son or daughter.

GRANT —

1. To transfer property to another, especially real property.
2. To allow a motion.

GRANTEE — The person to whom a grant is made, *i.e.*, the person who receives or buys title to real property by deed.

GRANTOR — The person who makes a grant, *i.e.*, the person who gives or sells title to real property by deed.

GROUND FOR DIVORCE — In Massachusetts, the statutory fault grounds for divorce are: Adultery, Impotency, Utter Desertion, Gross and Confirmed Habits of Intoxication, Cruel and Abusive Treatment, Prison Sentence of Five (5) or More Years, and Nonsupport.

GROUP HOME — A home licensed by the Office for Child Care Services for the temporary board and care of a group of children; by the Department of Mental Health for the board and care of mentally ill people; by the Department of Mental Retardation for mentally retarded people; or by the Department of Youth Services for delinquent children.

GUARANTOR — A person who is liable to fulfill another person's financial obligation in the event the other person fails to fulfill it. The other person is known as the principal.

GUARDIAN — A person with the legal duty and power to care for a minor or for a person who is legally incapacitated by reason of mental retardation, mental illness or physical incapacity. A guardian may be appointed by a court or designated in a will, though a guardian designated in a will must still be appointed by the court.

GUARDIAN AD LITEM — A guardian “for the suit” (Latin), appointed by the court during the course of litigation to promote and protect the interests of a person affected by the litigation. Examples:

1. A guardian *ad litem* may be appointed to represent the interests of a minor or incompetent person who is a defendant in a civil action.
2. A guardian *ad litem* may be appointed to represent the interests of any person in any proceeding in the Probate and Family Court. Sometimes a court appoints a guardian *ad litem* to protect the interests of an unascertained, unknown, unborn, or disappeared person.
3. A guardian *ad litem* may be appointed to protect the interests of a minor who is a party to or affected by a domestic relations or juvenile proceeding.
4. A guardian *ad litem* may be appointed by a court to investigate some aspect of the facts of a case related to a minor or incompetent person and to report back to the court regarding the results of the investigation.

GUILTY — Legally responsible for a crime.

HABEAS CORPUS — Latin for “you have the body.” One of the fundamental protections of individual liberties in Anglo-American law, a writ of *habeas corpus* is used to bring a person who is in the custody of the state before a court or judge. It commands the sheriff or other person to produce the detainee in court so that the court may determine whether that person is being held legally.

HABEAS CORPUS AD RESPONDENUM — Latin for “you have the body to respond.” A writ used to bring a prisoner from prison to court to appear as a defendant in a civil trial in another case.

HABEAS CORPUS AD TESTIFICANDUM — Latin for “you have the body to testify.” A writ used to bring a prisoner from prison to court to testify in another case.

HABE — A slang verb referring to the use of a writ of *habeas corpus* to bring a prisoner into court. The person produced is said to have been “habed” into court.

HARMLESS ERROR — An error committed in the course of a trial that does not justify reversal of the verdict on appeal.

HEALTHCARE PROXY — A written instrument signed by one person giving another person authority to make decisions relating to healthcare in the event of the incapacity of the person signing the written instrument.

HEARING — A formal proceeding that is much the same as a trial and may result in issuance of a final order.

HEARSAY EVIDENCE — Testimony in court about a statement made outside of court, offered to prove the truth of the matter asserted in the statement. Hearsay is generally inadmissible, although there are numerous exceptions to the rule against hearsay.

HEIR — A person who under law would inherit from an estate should the decedent not leave a will. A person has no heir(s) until his or her death. A surviving spouse is an heir (but is not next of kin) and his or her rights are superior to those of any other heirs.

HOLDING — The legally binding conclusions in an opinion or ruling that are necessary to decide the issue under consideration. Unlike *dicta*, the holding cannot be disregarded in future cases, but must be followed by lower courts.

HOLOGRAPHIC WILL — An unwitnessed will where the portions describing how the property is to be distributed are in the handwriting of the decedent, signed at the end by the decedent and dated.

HOMESTEAD — A declaration filed with the Registry of Deeds by the owner of land that protects the residence, land and buildings named against the claims of creditors, who can not force the sale of the property to satisfy the owner's debts.

HOSTILE WITNESS — A witness who exhibits such antagonism toward the party who called that witness to testify that cross-examination by the calling party is permitted by the court.

HOURLY FEE — Some lawyers charge by the hour and the hourly rate varies from lawyer to lawyer. Every time a lawyer works on a case, including telephone calls, writing letters, arranging court dates, appearing in court etc., the client will likely be charged.

HOUSE OF CORRECTION — A county detention facility administered by a sheriff which houses criminal defendants who: (1) are not granted bail or are not able to post the bail ordered by the court while they await trial; (2) are convicted of a misdemeanor; or (3) are convicted of a felony in the District Court Department.

HOUSING COURT DEPARTMENT — One of the seven Trial Court Departments in the Commonwealth. There are five divisions of the Housing Court Department, all of which have concurrent jurisdiction with both the District Court Department and the Superior Court Department to hear cases involving the use of real property and activities that affect the health, welfare and safety of any resident, occupant, user or member of the public, including eviction cases and cases seeking enforcement of building, health and sanitary codes.

ICWA — See **INDIAN CHILD WELFARE ACT**.

ILLEGITIMATE CHILD — See **OUT OF WEDLOCK**.

IMPANEL — To select the members of a jury from a venire.

IMPEACHMENT OF WITNESS — Questioning of a witness that attempts to cast doubt on the credibility (believability or truthfulness) of that witness.

IMPLEAD — See **THIRD PARTY COMPLAINT**.

IMPOUNDMENT — The act of keeping some or all of the papers, documents or exhibits in a case separate and unavailable to the public. Impoundment must be ordered by a judge and is normally allowed only on motion, and only if the moving party shows that allowing public access to the information in question would be harmful. Some material in some types of cases is automatically impounded.

IN CAMERA — Latin for “in chambers” or “in private.”

1. An *in camera* examination is a judge’s review of documents in chambers prior to issuing a ruling regarding their admissibility or use.
2. An *in camera* hearing is one held in the judge’s chambers or in the courtroom with the public excluded.

IN FORMA PAUPERIS — Latin for “in the form of a pauper.” Permission given to an indigent person to proceed without paying any court costs or fees associated with a legal action or claim.

IN HAND — In some cases, a summons, subpoena or other document must literally be placed in the hand of the person to whom it is addressed in order to be properly served, referred to as “in hand” service of process.

IN PERSONAM JURISDICTION — See **JURISDICTION**.

IN REM — Latin for “regarding the thing.” An *in rem* action is an action concerning title to property, usually real property (as opposed to an action *in personam* or against a person.) Two elements are necessary to obtain *in rem* jurisdiction: the property must be located in the Commonwealth and adequate notice must be given to all parties having an interest in the property.

INADMISSIBLE — See **ADMISSIBLE EVIDENCE**.

INCARCERATION — Commitment to a detention facility such as a prison or house of correction.

INCOMPETENT EVIDENCE — Inadmissible evidence.

INCOMPETENT TO STAND TRIAL — See **COMPETENT**.

INCONVENIENT FORUM — See **FORUM NONCONVENIENS**.

INCULPATORY EVIDENCE — Evidence which tends to incriminate the accused or prove that the accused committed the offense or acts charged or alleged.

INDIAN CHILD WELFARE ACT (ICWA) — A federal law which places additional notice, procedural, and evidentiary requirements on the petitioner as well as the court in care and protection proceedings or termination of parental rights cases involving Native American children who are members of or eligible to become members of a federally recognized Indian tribe.

INDICTMENT — A formal accusation voted by a grand jury at the request of a prosecutor which charges a person with a crime. The grand jury indictment replaces the application for criminal process in felony cases. Also called a “true bill.”

INDIGENT — Impoverished; needy; poor; without funds. At law, a person whose funds are adjudged to be insufficient for a particular purpose. Many court fees are waived for people who are indigent and file an affidavit of indigency. In a criminal case, counsel is appointed for an indigent defendant.

INFERIOR COURT — Any court subordinate to a higher appellate court in a particular judicial system.

INFRACTION — The violation of a statute, code or ordinance which is treated as a civil rather than a criminal offense and which is punishable by a fine.

INHERITANCE — Property received from someone who dies, whether by will or by intestate succession.

INJUNCTION — An order requiring a person to do a particular thing or to stop doing something that threatens to cause or causes irreparable injury to another. A *preliminary injunction* is granted while the case is going on to stop a party from doing or continuing some act until the rights of the parties are fully determined, and may become permanent once the issues are adjudicated. A *permanent injunction* remains in force unless and until modified by a later order of a court.

INNOCENT — A non-legal term indicating that a person did not commit a crime and bears no responsibility for the offense charged. In contrast, the legal term “not guilty” means that there is insufficient legally admissible evidence to convict a person of the crime charged, regardless of whether he or she actually committed the crime or not. A not guilty verdict simply means that the prosecution failed to meet its burden of proof.

INQUEST — An evidentiary hearing presided over by a judge of the District Court Department inquiring into the manner of death of someone who has been killed or has died suddenly or under unusual circumstances. An inquest can be requested by the Attorney General or a District Attorney, or, less frequently, by the Medical Examiner and may result in an indictment or take the place of an indictment if the court finds that a crime has been committed.

INTER VIVOS — Latin for “between living people.” Usually refers to a type of trust which is created and funded during the life of the person who created the trust (as opposed to a trust which is created and funded in a person’s will.)

INTERIM BOND — A bond set by a police officer when a person is arrested for a misdemeanor offense without a warrant. Any misdemeanor warrant may also have an interim bond endorsed on it by the issuing judge or magistrate. An interim bond allows the defendant to be released pending arraignment.

INTERIM ORDER — See **TEMPORARY ORDER**.

INTERLOCUTORY — An interlocutory order generally decides some legal or procedural point or matter during a lawsuit but is not a final decision of the case.

INTERLOCUTORY APPEAL — An appeal of an interlocutory order. In general, appellate courts are reluctant to rule on interlocutory matters prior to the final decision in the case.

INTERPLEADER — On occasion, two or more people claim the same thing from a third party, and the third party does not know who has the better claim. If one claimant brings a lawsuit against the third party, the third party may bring all of the other claimants into the suit in a process called “interpleading.” This allows all of the claims to be resolved at once, in a single legal action.

INTERPRETER — One who converts spoken words from one language to another.

INTERROGATORIES — A set of written questions about a case posed as part of the discovery process by one party to the other. The answers to interrogatories must be given in writing under oath in accordance with the Massachusetts Rules of Civil Procedure. See **DISCOVERY**.

INTERSTATE — Involving two or more states.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN — An agreement among all fifty states, the District of Columbia, and the U.S. Virgin Islands that a state agency will not send a child to another state for foster care or other substitute care without the receiving state having an opportunity to investigate the placement and approve or disapprove of the placement. The sending agency includes but is not limited to the Department of Social Services and the court.

INTERSTATE COMPACT ON JUVENILES — An agreement among all fifty states, the District of Columbia, and the U.S. Virgin Islands to cooperate with the return from one state to another of delinquent juveniles who have escaped or non-delinquent juveniles who have run away from home. The agreement also permits a delinquent juvenile within one state to be placed on probation or parole in another state if the juvenile intends to reside in that state.

INTERSTATE INCOME WITHHOLDING ORDER — An order entered to secure the enforcement of child support obligations by withholding income derived in one state to satisfy a child support order of another state.

INTESTATE — Dying without having made a valid will. When someone dies intestate, distribution of the estate is determined by statute.

INTESTATE SUCCESSION — The statutory scheme for determining who inherits property when a decedent dies intestate.

INVENTORY — A list of the assets of a decedent or ward that are subject to management by a fiduciary, required by law to be filed in the Probate and Family Court within three months of the appointment of the fiduciary.

IRRETRIEVABLE BREAKDOWN — A ground for divorce wherein fault is not assigned to either party. If the parties agree on the grounds for divorce and have a written agreement on all issues (including child custody, child support, alimony and the division of assets), a divorce for irretrievable breakdown may be granted based on a joint petition for divorce pursuant to G.L.c.208, §1A, often referred to as a “1A divorce.” If the parties are unable to reach an agreement prior to filing for divorce, one person can file a complaint for divorce alleging irretrievable breakdown of the marriage, pursuant to G.L. c. 208, §1B.

ISSUE —

1. Of a person: All of the person’s lineal descendants of all generations.
2. In a pleading: A single, certain, and material point, which is in dispute in the case.

ISSUE PRECLUSION — See **COLLATERAL ESTOPPEL**.

J.N.O.V. — See **JUDGMENT NOTWITHSTANDING THE VERDICT**.

JAIL — See **HOUSE OF CORRECTION**.

JENKINS HEARING — When a person is arrested without a warrant, a decision must be made by a judge or a clerk-magistrate within 24 hours as to whether that person will be released on bail or recognizance or whether there is probable cause to hold the person if they would be held solely because of the arrest and not because of any other outstanding warrant or other case. This hearing is called a *Jenkins* hearing after the case in which the Supreme Judicial Court announced this requirement.

JOINT CUSTODY — See **SHARED CUSTODY**.

JOINT PETITION FOR DIVORCE — A petition filed by husband and wife together when both agree on all issues pertaining to a divorce including the grounds for divorce, the division of marital property and all issues related to the children (if any).

JOINT PHYSICAL CUSTODY — See **SHARED CUSTODY**.

JUDGE — A public officer appointed to decide cases in a court of law. In Massachusetts, judges are appointed by the Governor. See **BENCH TRIAL**, **JURY TRIAL**.

JUDGMENT — The decision of a court disposing of a case, almost always issued in writing. The written judgment is often accompanied by a written discussion of the facts and law supporting the court's decision.

JUDGMENT ABSOLUTE — The final judgment in a divorce, which enters automatically 90 days after the judgment *nisi* unless objections are filed.

JUDGMENT *NISI* — Latin for “unless.” A judgment by the Probate and Family Court which dissolves a marriage and addresses custody and marital property issues. The judgment becomes absolute after 90 days.

JUDGMENT NOTWITHSTANDING THE VERDICT — A judgment that reverses a jury's verdict, granted when a judge determines that the jury verdict has no reasonable support in fact or is contrary to the law. This is often referred to as a “J.N.O.V.” or “Judgment N.O.V.”

JUDGMENT N.O.V. — See **JUDGMENT NOTWITHSTANDING THE VERDICT**.

JUDICIAL NOMINATING COMMISSION — A group appointed by the Governor to solicit, interview, evaluate and recommend candidates for the positions of judge or clerk-magistrate.

JUDICIAL RESPONSE SYSTEM — A system operated by the Administrative Office of the Trial Court designed to make judges available at all times. All judges in the Commonwealth serve for a week at a time and are available to the police by beeper and telephone at night, on weekends and on holidays. Judges on Judicial Response can issue temporary restraining orders under c.209A, make emergency mental health commitments, issue search warrants, and handle other emergency situations.

JURISDICTION — A court's authority to decide cases. Major aspects of a court's jurisdiction are:

1. Subject Matter Jurisdiction: The authority to hear a particular type of case. For example, the Probate & Family Court has jurisdiction over divorce cases, and the District Court and the Housing Court have jurisdiction over small claims cases.
2. Personal Jurisdiction: The legal power of a court to render a judgment against a particular person or corporation in a proceeding, also called “*in personam*” jurisdiction.
3. Geographic Jurisdiction: Similar to venue, but geographic jurisdiction can not be waived. For example, by statute the divisions of the Housing Court Department have jurisdiction only over disputes arising in the particular geographic area.

JURY — A group of people sworn to consider the evidence presented by the parties, determine issues of fact, and deliver a verdict in a trial. A trial jury is also known as a “*petit* jury.”

JURY CHARGE — See **JURY INSTRUCTIONS**.

JURY COMMISSIONER — The officer responsible for administering the jury system. The Office of the Jury Commissioner is part of the Administrative Office of the Trial Court and is responsible for scheduling citizens of the Commonwealth to appear for jury duty in a particular court on a particular day and for prosecuting those who fail to appear when required to do so.

JURY INSTRUCTIONS — Instructions given by the judge to the jury regarding the law that applies to the case being heard by the jury. Also known as the “charge to the jury” or “jury charge.”

JURY PANEL — The group of prospective jurors from which the trial jury is chosen, also known as a *venire*.

JURY TRIAL — In a jury trial, the jury determines issues of fact, applies the law to the facts, and delivers a verdict. See **JURY, JURY INSTRUCTIONS**.

JUVENILE — A person under the age of 17.

JUVENILE COURT — The Juvenile Court Department of the Trial Court has general jurisdiction over delinquency proceedings, children in need of services (CHINS), care and protection petitions, adult contributing to delinquency of a minor cases, adoptions, guardianships, termination of parental rights proceedings and youthful offender cases. The Department was created by the court Reorganization Act of 1992. When implementation is completed, there will be 11 divisions with judges sitting in more than 40 locations.

JUVENILE DELINQUENCY PROCEEDINGS — See **DELINQUENCY PROCEEDINGS**.

KIN — Anyone related to a person (including a deceased person) by blood.

LAND COURT — The Land Court Department of the Trial Court is the only court of its type in the United States, other than Hawaii. The six judges of the Land Court hear cases statewide involving the registration of title to real property, disputes about the title to real property, taxes on real property, mortgage foreclosures and appeals from the decisions of local zoning and planning boards.

LANDLORD — The person or entity that controls and rents real property to others in return for the payment of money or other consideration, usually the owner of the property.

LAWSUIT — See **CASE**.

LAWYER — See **ATTORNEY**.

LAWYER FOR THE DAY — A volunteer lawyer available in some courts to speak to individual litigants at the courthouse and provide limited legal advice at no cost.

LAWYER REFERRAL SERVICE — An organization that provides individuals looking for legal assistance with the names of lawyers who might be able to represent them in a legal matter. Typically, a local, county or state bar association will be a source of information about lawyer referral services.

LEASE — A contract or agreement for the rental of real or personal property for a specified or determined period of time and, in the case of real property, giving rise to the relationship of landlord (the “lessor”) and tenant (the “lessee”).

LEGACY — Personal property left by will to another.

LEGAL CUSTODY — See **JOINT CUSTODY, CHILD CUSTODY**.

LEGAL SERVICES PROGRAM — An organization that provides free legal assistance in certain types of cases to individuals meeting income eligibility requirements.

LEGATEE — A person who receives property under a will.

LEGISLATIVE HISTORY — The background of a statute, including reports of committees of the Legislature and prior versions of the bill showing additions and revisions to it, which helps an appellate court determine what the Legislature intended when it enacted the statute.

LESSEE — One who leases property.

LESSER INCLUDED OFFENSE — A crime the elements of which are also elements of another crime, but the other crime has one or more additional elements. Examples: assault and battery is a lesser included offense of indecent assault and battery; voluntary manslaughter is a lesser included offense of murder; possession of cocaine and possession of cocaine with intent to distribute are both lesser included offenses of trafficking in cocaine.

LESSOR — One who offers property to be leased.

LIABLE — Obligated by law; responsible for. In a civil case, a defendant is “liable” or “not liable” for the damages sought, rather than “guilty” or “not guilty” as in a criminal case.

LIBEL — Injury to a person’s character or reputation by print, writing, pictures, or signs.

LIEN — A claim against property to secure a debt or other obligation. A lien may be recorded in the Registry of Deeds so that anyone checking the title to a particular piece of real property will know that someone has a claim to that property.

LIMITED ASSISTANCE REPRESENTATION — Legal services provided under an agreement between the client and the lawyer providing that the lawyer will perform only specific tasks on the case, but the client will be responsible for other tasks.

LIMITED GUARDIAN — A guardian for a minor or a person legally incapacitated by mental retardation, mental illness, or physical incapacity, whose powers over the person have been limited by a court’s order.

LINEUP — A police procedure by which a suspect in a crime is exhibited with other similar-appearing people to determine whether a witness can identify the suspect as the perpetrator.

LIS PENDENS — Latin for “suit pending.” When real property is the subject of litigation, a “notice of *lis pendens*” may be filed with the Register of Deeds in the county where the property is located. This notice warns people who deal with the property that it is subject to litigation and that they may be bound by the court’s judgment regarding the property.

LITIGANT — A party to a lawsuit.

LITIGATION — The process of resolving a dispute in court.

LONG ARM STATUTE — A law (G.L. c.223A) that allows a court to assert personal jurisdiction under certain circumstances over a person who is outside of the Commonwealth of Massachusetts.

MAGISTRATE — See **CLERK-MAGISTRATE**.

MAJORITY OPINION — A written opinion announcing the court's decision in any case decided by more than one judge. The majority opinion explains the reasoning followed by a majority of the justices who heard the case, and its holding is binding on the lower courts in future cases.

MALFEASANCE — The intentionally improper performance of some act or duty.

MALICE —

1. In law, deliberately and knowingly breaking the law without legal justification or excuse.
2. In slander or libel cases, deliberately making a false statement about another or making a false statement in reckless disregard of its falsity.

MANDAMUS — Latin for “we command.” A written order requiring the person to whom it is addressed, often a public official, to do some specified act, generally connected with an official duty.

MANDATED REPORTER — A person required by law to report suspected child abuse or child neglect to the Department of Social Services.

MANDATORY MINIMUM — When a person is convicted of certain crimes, the Legislature requires a judge to impose a specific minimum sentence, narrowing or removing the judge's discretion to determine the sentence.

MARITAL PROPERTY — Property belonging to spouses which is subject to equitable distribution if the spouses divorce.

MASSACHUSETTS CORRECTIONAL INSTITUTION (MCI) — See **STATE PRISON**.

MASSACHUSETTS GENERAL LAWS (MGL) — Statutes of general and continuing application, as opposed to session laws.

MASSACHUSETTS GENERAL LAWS ANNOTATED (MGLA) — A series of volumes containing the text of all Massachusetts general laws, plus brief references to cases and legal commentaries discussing the statutes.

MCI — See **STATE PRISON**.

MGL — See **MASSACHUSETTS GENERAL LAWS**.

MGLA — See **MASSACHUSETTS GENERAL LAWS ANNOTATED**.

MASTER — A person, usually an attorney or a retired judge, appointed by the court to hear and summarize the merits of a case or pass judgment subject to approval of the court. The master reports facts and may examine parties under oath.

MEDIATION — A voluntary, confidential process in which a neutral is invited or accepted by disputing parties to assist them in identifying and discussing issues of mutual concern, exploring various solutions and developing a settlement mutually acceptable to the disputing parties.

MEDICAL EXAMINER — A public official appointed by the governor to inquire into the cause and circumstances of certain deaths, including violent, unexpected, public or other unusual or suspicious deaths. Also known as a “coroner.”

MEMORANDUM OF LAW — See **BRIEF**.

MENTAL ILLNESS — A substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

MENTAL RETARDATION — Significantly below average intellectual abilities.

MILITARY AFFIDAVIT — A form used to indicate whether a party to a case is in the military of the United States or its allies. This form notifies the court of the need to appoint a military attorney for the purpose of giving notice if a party is in the service, as required by the Soldiers and Sailors Relief Act.

MINI-TRIAL — A two-step process to facilitate settlement of a case in which (a) the parties' attorneys present a summary of the evidence and arguments they expect to offer at trial to a neutral in the presence of individuals with decision-making authority for each party and (b) the individuals with decision-making authority meet with or without the neutral to discuss settlement of the case.

MINOR — In most cases, a person under the age of 18. In delinquency cases, a person under the age of 17.

MIRANDA WARNING — A warning and statement of rights given by police prior to questioning a person in their custody who is arrested for committing a crime, advising or informing the individual of the right to remain silent, the right to an attorney, the right to have an attorney provided if indigent and a warning that any statement given may be used against the person. The name refers to *Miranda v. Arizona*, 384 US 436 (1966), a U.S. Supreme Court case in which the court outlined the information the police must give to those in their custody. Arrestees who have been given the required warnings are sometimes said to have been "Mirandized."

MIRANDIZE — See **MIRANDA WARNING**.

MISDEMEANOR — Any crime not punishable by a sentence to a state prison. Both the District Court and the Superior Court have jurisdiction over all misdemeanor cases, though the vast majority are heard in District Court.

MISFEASANCE — The negligently improper performance of some act or duty.

MISTRIAL — A trial terminated prior to a verdict, most commonly due to prejudicial error in the proceedings or the inability of the jury to agree upon a verdict.

MITT — See **MITTIMUS**.

MITTIMUS — Latin for "we send":

1. A writ presented to the keeper of a jail or prison, directing the keeper to receive and hold an offender awaiting trial or sentence. Sometimes referred to as a "mitt."
2. A writ directing the transfer of records from one court to another.

MOOT —

1. A case is moot and will not be heard by a court if the issue involved has been resolved prior to the court's decision, leaving no dispute which would be affected by the court's decision.
2. Moot court is a "practice court" for law students.

MORTGAGE — A lien on real property to secure the performance of some obligation. The lien is discharged upon payment or performance as agreed. In modern times, most real property owners borrow money from a bank to purchase the property. The bank receives a mortgage in exchange for the loan and can take the property in a process called foreclosure if the property owner fails to repay the loan as agreed.

MORTGAGEE — One who holds a mortgage; the creditor, often a bank.

MORTGAGOR — The maker of a mortgage; the debtor, often a homeowner.

MOTION — A request made to a court for the purpose of obtaining a certain order or decision in favor of the person making the request, known as the “moving party.” Motions may be made in writing or orally.

MOTION *IN LIMINE* — Latin for “at the threshold.” A motion before trial to exclude testimonial evidence from admission at trial.

MOTION TO COMPEL — A motion seeking to force the other party to comply with a discovery request.

MOTION TO SUPPRESS — A motion made prior to a criminal trial, asking the court to exclude certain evidence offered by the District Attorney at trial because it was obtained in violation of the defendant’s constitutional rights.

MOTION TO QUASH — See **QUASH**.

MOTION JUDGE — The judge who decides a motion before a trial (such as a motion to suppress or a motion to dismiss) but who may or may not hear the actual trial. An appellate court may need to distinguish between the motion judge and the trial judge, depending on whose decision is before the appellate court.

MOTION SESSION — A court session exclusively devoted to the hearing and disposition of motions.

MOVING PARTY — The party who makes a motion.

NEUTRAL — As used in the Trial Court, the term “neutral” means an individual engaged as an impartial third party to provide dispute resolution services. A neutral could be a mediator, an arbitrator, a case evaluator or a conciliator. A neutral could also be a court employee such as a master, clerk, clerk-magistrate, register, recorder, housing specialist, probation officer or other person when that person is engaged as an impartial third party to provide dispute resolution services. In some situations, a neutral may also be the administrator of a program providing court-connected dispute resolution services.

NCP — See **NON-CUSTODIAL PARENT**

NE EXEAT — Latin for “you may not exit.” An order forbidding the person to whom it is addressed to leave the country, the state or the jurisdiction of the court.

NEUROLEPTICS — See **ANTIPSYCHOTIC MEDICATIONS**

NEXT FRIEND — Similar to a guardian *ad litem*, a next friend may be appointed by the court to represent, defend or prosecute the interests of a minor or incompetent person. A child’s parents may also file suit as the child’s next friend without a court appointment.

NEXT OF KIN — The closest blood relative to a person, as defined by local law.

NIGHT TIME — In criminal cases, one hour after sunset on one day until one hour before sunrise on the next day.

NISI — See **JUDGMENT *NISI***

NO CONTACT ORDER — A provision in an order (e.g., an order for the defendant’s pretrial release in a criminal case) that the person subject to the order not have contact with another person, often the victim or a witness.

NO FAULT — A case which is decided without making a determination as to which party is at fault. For example, a no fault divorce can be granted simply because the parties wish to be divorced, without requiring either party to show that the other party committed adultery, was cruel and abusive or was otherwise the cause of the end of the marriage.

NO FAULT INSURANCE — A type of automobile insurance which pays for damage regardless of who was at fault in causing the damage.

NOL PROS — See **NOLLE PROSEQUI**.

NOLLE PROSEQUI — Latin for "no further prosecution." A formal declaration made on the court record that the prosecutor will not further prosecute the case. Sometimes referred to as a "*nol. pros.*" and sometimes noted on the docket as "*NP.*"

NOLO CONTENDERE — Latin for "I will not contest it." Not strictly a plea but a statement made in lieu of a plea that is not an admission of guilt by the defendant in a criminal case, but is an indication of readiness to accept conviction and sentence rather than go to trial. A guilty plea would require the defendant to tell the court exactly what he or she did, and the statement would have to fit the charge. When a defendant pleads *nolo contendere*, there is no such requirement. If a civil action is pending, or may later be filed, the defendant can thus avoid testimony that might create liability in the civil action.

NON-CUSTODIAL PARENT (NCP) — The parent who does not have custody of a child. Usually refers to the parent with whom the child does not live, although the non-custodial parent may have shared legal custody of the child.

NONFEASANCE — The failure to perform some act or duty which ought to be performed.

NOT GUILTY —

1. A plea entered by a defendant in a criminal case, indicating that the defendant is not admitting to the charges and that the Commonwealth will have to prove the allegations in order to convict the defendant.
2. A verdict of a jury or judge in a criminal case. A "not guilty" verdict is not a finding that the defendant is innocent of the charges but rather indicates that the Commonwealth has failed to meet its burden of proving criminal charges beyond a reasonable doubt.

NOTARY/NOTARY PUBLIC — A person who is authorized by the state to administer oaths and to certify the authenticity of signatures.

NOTICE OF APPEAL — The form or paper filed by a party to request that an appellate court review an interlocutory decision or judgment made by a Trial Court. The original is filed with the Trial Court Department or Division where the case originated, which prepares the record on appeal to send to the appellate court.

NOTICE OF HEARING — A document notifying a person of the time, date, place, and subject matter of an upcoming court proceeding.

NOTICE TO QUIT — A written notice by a landlord to a tenant demanding that the tenant vacate the property, terminating the tenancy. Depending on the grounds for the eviction, the notice to quit may give the tenant 7, 14, 30 or more days to quit the premises. In Massachusetts, a notice to quit must be served and the specified amount of time must pass without the tenant vacating the premises before eviction proceedings can be started, unless there is a written lease that terminates itself.

NP — See **NOLLE PROSEQUI**.

NUNC PRO TUNC ORDER — Latin for “now for then.” An order allowing acts done after they should have been done (now) to be effective retroactively to when they should have been done (then).

NUNC PRO TUNC AMENDMENT — An amendment given retroactive effect by court order.

NUNC PRO TUNC FILING — The filing of a pleading to take effect as of an earlier time.

OATH — A declaration of the truth of a statement, made under penalties of perjury and generally invoking the Deity’s name in support of the statement’s truth.

OBO (ON BEHALF OF) — See **NEXT FRIEND**.

OCP — See **OFFICE OF THE COMMISSIONER OF PROBATION**.

OFFENSE — A crime or ordinance violation. The word “offense” generally implies an act infringing public rather than private rights.

OFFICE OF THE COMMISSIONER OF PROBATION — This office is responsible for administering the probation system in the Commonwealth.

ON BEHALF OF — See **NEXT FRIEND**.

ONE DAY, ONE TRIAL — The Massachusetts system for summoning and utilizing jurors whereby an individual spends no more than one day waiting to be selected for a jury or, if selected, serves only for the length of one trial.

ONE TRIAL SYSTEM — See **DE NOVO**.

OPEN ADOPTION — An adoption where the biological parents maintain contact with the child by agreement with the adoptive parents.

OPEN ADOPTION AGREEMENT — See **POST-ADOPTION CONTACT OR COMMUNICATION AGREEMENT**.

OPINION — See **CONCURRING OPINION, DISSENTING OPINION, MAJORITY OPINION**.

ORAL ARGUMENT — Time allotted by a court for the parties to argue the merits of their positions. In an appellate court, oral argument is usually fifteen minutes per side. In first degree murder cases, each side is given thirty minutes. Many appellate cases are decided without oral argument.

ORDER — A direction of a court.

ORDER AFTER NOTICE — In an abuse prevention case under c. 209A, the order issued by the court after a 10-day hearing at which both the defendant and the victim have an opportunity to present evidence. The initial order after notice can last for up to one year and can be extended for additional one year terms or can be made permanent after the first year.

ORDER OF PRETRIAL DETENTION — See **DANGEROUSNESS HEARING**.

ORDINANCE — A local law or regulation enacted by a city. It has no effect outside that city.

OUT OF WEDLOCK — A child born to parents who are not married to each other is said to be born “out of wedlock.” Formerly referred to as an “illegitimate child.”

PANEL —

1. See **JURY PANEL**, *VENIRE*.
2. Rather than have all of the justices on an appellate court hear and decide each case that comes before the court, justices may sit in panels of three (in the Appeals Court) or five (in the Supreme Judicial Court) to hear and decide cases. Both the Appeals Court and the Supreme Judicial Court hear cases in panels.

PARENS PATRIAE DOCTRINE — Latin for “parent of the country.” The inherent power and authority of the state to protect the person and property of people who are legally unable to manage their own affairs, such as minors and people found to be incompetent.

PAROLE — Conditional release from prison before the end of sentence; if the parolee observes the conditions, he or she need not serve the rest of his or her term. Parole is granted by a state agency called the Parole Board and is supervised by a parole officer.

PAROLE BOARD — The state agency responsible for hearing and deciding requests by prisoners to be released on parole.

PARTITION — The division of real property belonging to an estate among two or more interested parties.

PARTY —

1. A person concerned with or taking part in a matter or transaction, such as a party to a contract.
2. A person by or against whom a lawsuit is brought, *i.e.*, the plaintiff or defendant.

PATERNITY — Fatherhood.

PATERNITY SUIT — A suit to establish whether a particular person is a child's father and to determine the father's obligation to support the child.

PENDENTE LITE — Latin for “during litigation.”

PER CAPITA — Latin for “by the head.” A method of dividing an estate equally among a given number of people; the opposite of *per stirpes*.

PER STIRPES — Latin for “by roots or stocks.” A method of dividing an estate by right of representation where a group of distributees take the share to which their deceased ancestor would have been entitled, such as where children take the share to which their parent would have been entitled if the parent were still alive; the opposite of *per capita*.

PEREMPTORY CHALLENGE — The right of a party to challenge, or eliminate from the *venire*, a certain limited number of potential jurors without giving any cause or reason.

PERJURY — A deliberate lie made in a judicial proceeding or a legal document where the witness is sworn to tell the truth or is otherwise under a legal obligation to tell the truth.

PERMANENCY HEARING — A hearing or series of hearings to determine and monitor implementation of a permanency plan for a child in the custody of the Department of Social Services. The first hearing must take place within one year of a child's placement in state foster care and every twelve months thereafter.

PERMANENCY PLAN — A plan determined by the Juvenile Court for a child who is the subject of a child welfare proceeding and who is in the custody of the Department of Social Services. The plan must address whether, and if applicable, when: (1) the child will be returned to the parent; (2) the child will be placed for adoption and the steps the Department shall take to free the child for adoption; (3) the child will have a legal guardian appointed; or (4) the child will be placed in another planned permanent living arrangement.

PERMANENT INJUNCTION — See **INJUNCTION**.

PERSONAL PROPERTY — All property except real property.

PERSONAL RECOGNIZANCE — See **RELEASE ON RECOGNIZANCE**.

PERSONAL REPRESENTATIVE — See **ADMINISTRATOR/RIX**.

PETIT JURY — See **JURY**.

PETITION — A written request to the court, often initiating a court action; also the document in which the request is made.

PETITIONER — The person who files a petition, requesting or initiating a court action. In some cases, such as a joint petition for divorce, both parties are referred to as the petitioner.

PETITION FOR DEPOSIT — A pleading in which a fiduciary requests authorization to deposit funds in a bank account in the name of the First Justice of the Probate and Family Court for the benefit of a minor or of an heir whose whereabouts are unknown.

PETITION FOR REMOVAL OF FIDUCIARY — A pleading filed by an heir or next of kin for the removal of a fiduciary who is alleged to be unsuitable.

PHYSICAL CUSTODY — See **CUSTODY, CHILD CUSTODY, JOINT CUSTODY**.

PLAINTIFF — The person who initiates a civil case by filing the complaint.

PLEA — The defendant's response to a criminal charge (e.g., guilty, not guilty, *nolo contendere*).

PLEA-BARGAINING — In criminal cases, a process of negotiation between the prosecutor and the defendant that is intended to resolve the case without a trial, by agreeing on a sentence to be recommended to the judge in exchange for the defendant's plea of guilty.

PLEADINGS — In a civil action, the papers that set forth the parties' claims and defenses. The plaintiff's pleadings state his or her claims against the defendant. The defendant's pleadings state his or her defenses to the plaintiff's claims and any counterclaims he or she may have.

POST ADOPTION CONTACT OR COMMUNICATION AGREEMENT — An enforceable agreement between a child's birth parents and the child's adoptive parents to allow for the exchange of information regarding the child, or visitation, after the adoption decree is entered. The agreement must meet the statutory provisions of G.L.c.210, § 6C in order to be enforceable. A Post Adoption Contact and Communication Agreement is often referred to as an "Open Adoption Agreement."

POWER OF ATTORNEY — A written instrument appointing and authorizing a person to act in the place of another as agent or substitute. One holding a power of attorney is called an attorney-in-fact, and may or may not be a lawyer. A "durable power of attorney" is one which becomes or remains effective if the person granting it later becomes disabled.

PRECEDENT — Earlier appellate decisions which control, in whole or in part, the issue currently before a court. Precedent is sometimes referred to by its Latin name, *stare decisis*, which refers to the binding nature of precedent.

1. Binding precedent is Massachusetts case law from the Supreme Judicial Court, which must be followed by all courts in cases in which similar issues arise unless distinguished or overruled.

2. Persuasive precedent is all other case law, including decisions by the Appeals Court, the federal First Circuit Court of Appeals, and the appellate courts of other states, which is binding in the particular case in which the decision was made and which gives guidance on the issue being decided but does not bind the deciding court in other cases.

PRECLUSION — See *RES JUDICATA*, *COLLATERAL ESTOPPEL*.

PREJUDICIAL ERROR — An error in the course of a trial serious enough to require an appellate court to reverse the judgment. Also known as “reversible error.”

PRENUPTIAL — Made or done before marriage. Usually refers to an agreement regarding how marital assets are to be distributed upon the death of one of the marriage partners or if the parties divorce. Also known as “antenuptial.”

PREPONDERANCE, PREPONDERANCE OF THE EVIDENCE — See **BURDEN OF PROOF**.

PRELIMINARY INJUNCTION — See **INJUNCTION**.

PRESENTENCE REPORT — A written report prepared by a Probation Officer containing the family and personal history of the defendant, evaluation of the crime and its ramifications, and recommendations as to the sentence. It is required in all felony cases and is presented to the judge as a guide in determining the sentence.

PRESIDING JUDGE —

1. The judge conducting a hearing or trial. The judge in charge of a case.
2. See **FIRST JUSTICE**.

PRETRIAL CONFERENCE — A hearing conducted by the judge or by a designated conciliator to resolve, narrow or reduce the number of issues that must be tried on the merits.

PRETRIAL DETAINEE — A criminal defendant whose case has not yet been adjudicated but who has been denied bail or is unable to post the bail set and so is being held in a jail.

PRETRIAL HEARING — See **PRETRIAL CONFERENCE**.

PRIMA FACIE — Latin for “at first sight.”

1. **PRIMA FACIE CASE**: Those facts that will establish a party’s right to relief if no evidence to the contrary is offered by the party’s opponent.
2. **PRIMA FACIE EVIDENCE**: Evidence that is sufficient to prove a fact unless overcome by other evidence.

PRINCIPAL —

1. A person who has permitted or directed another (an agent) to act for his or her benefit.
2. A person responsible for paying a debt.
3. Property, as opposed to the income from the property. The term is often refers to property put into a trust or to the amount of a loan, not including the interest.

PRIVILEGE — A communication is privileged when it is made between persons in a special relationship protected by statute or common law, such as between an attorney and a client or a patient and a therapist. Such a communication is protected from forced disclosure during litigation unless the privilege is waived, but not all privileges can be waived.

PRO BONO — Latin for “for the public good”, used to describe legal services performed free of charge.

PRO SE — Latin for “for oneself.” A *pro se* litigant is a person who represents himself or herself in court without the aid of a lawyer.

PROBABLE CAUSE — In criminal cases, reasonable grounds for believing that the facts justify issuance of an arrest or search warrant, or further legal action.

PROBABLE CAUSE HEARING — Under Massachusetts law, a defendant charged by complaint in a criminal case in the District Court is entitled to a determination by a court as to whether there is probable cause to hold the defendant for trial, and more particularly, whether there is probable cause to bind over the defendant for indictment and trial in the Superior Court. The hearing must take place as soon as possible (theoretically within ten days of arraignment). The defendant is entitled to representation by an attorney, evidence is presented and witnesses may be examined. If the crime charged in the complaint is within the District Court’s jurisdiction, the judge must announce at the outset whether the hearing is a trial on the merits of the case, or a probable cause hearing. In order to bind a defendant over for indictment and trial in the Superior Court, the judge must find that there is probable cause to believe the defendant is guilty of the crime charged.

PROBATE — The process by which the probate assets of a decedent’s estate are transferred to the heirs through court proceedings.

PROBATE AND FAMILY COURT — The Department of the Trial Court with jurisdiction over family-related matters such as divorce, separate support, paternity, child support, custody, visitation, adoption, termination of parental rights and abuse prevention and probate matters such as wills, trusts, administrations, guardianships, medical treatment cases, conservatorships and change of names. There are 51 judges in the Department sitting in 14 divisions. There are 14 elected Registers of Probate, one for each division.

PROBATE ASSETS — Any property, real and/or personal, tangible and/or intangible, owned by the decedent at the time of his or her death in his or her own name alone or as a tenant in common except those assets which are subject to transfer on death by other mechanisms. For example, survivor benefits under a retirement plan are non-probate assets because the beneficiary is named by the decedent prior to his or her death.

PROBATION — A defendant convicted of a criminal offense may be ordered to serve some or all of the sentence “on probation” as opposed to being incarcerated. The release is subject to conditions which are usually supervised by a Probation Officer. If a person violates the conditions of probation, the probation can be revoked and the sentence imposed.

PROBATION OFFICER — An employee of the Office of the Commissioner of Probation who, on the criminal side, supervises the activities of people on probation, and who, on the civil side, may perform investigations and provide dispute intervention services, depending on the case and the court department.

PROBATION REVOCATION — The process by which a probationer is brought before the court for violating the terms of his or her probation. A probation revocation hearing can result in the imposition of a sentence to incarceration. Often referred to as a “probation surrender” or “surrender” hearing.

PROBATION SURRENDER — See **PROBATION REVOCATION**.

PROBATIONER — A person who is on probation.

PROCEEDING — Any hearing or court appearance related to the adjudication of a case.

PROCESS — An order to appear in court or to enforce a judgment. Subpoenas and summonses are examples of process.

PROCESS SERVER — A person authorized to deliver a summons or complaint to a person being sued or to deliver a subpoena to a witness.

PRODUCTION OF DOCUMENTS — A form of discovery in which the opposing party is asked to produce documents and other items related to the case.

PROPERTY — Anything that may be the subject of ownership.

PROSECUTOR — An attorney who represents the Commonwealth in a criminal case.

PUBLIC ADMINISTRATOR — The person who is named to administer the estate of a decedent who has no will naming an executor (dies intestate), and who has no known next of kin domiciled in the state. Public Administrators are appointed for each county, by the Governor, for a term of five years. They are temporarily in charge of the decedent's property until an administrator is appointed.

PUBLIC DEFENDER — An attorney paid by the Commonwealth to represent an indigent defendant in a criminal case.

PURCHASE-MONEY MORTGAGE — A mortgage on land given by the buyer to the seller concurrently with the conveyance of that land as collateral for the unpaid balance of the purchase price.

PUTATIVE — Alleged; supposed, *e.g.*, the putative father in a paternity case.

QDRO — See **QUALIFIED DOMESTIC RELATIONS ORDER**.

QUALIFIED DOMESTIC RELATIONS ORDER (QDRO) — An order by a Probate and Family Court judge, usually issued pursuant to a Judgment of Divorce, directing an employer (or former employer) to divide a retirement plan that is subject to the restrictions of the Employee Retirement Income Security Act (ERISA). This order is sometimes spoken of as a QDRO, pronounced “cuadro”.

QUANTUM MERUIT — Latin for “as much as he deserves.” A legal action requesting payment for the value of work performed even in the absence of a formal contract.

QUASH — To nullify an order. For example, a motion to quash a subpoena is a request by a party or a witness that the court modify or cancel a subpoena requiring a witness to testify or to produce records.

QUID PRO QUO — Latin for “this for that.” The giving of one thing of value for another.

QUO WARRANTO — Latin for “by what authority” or “by what warrant”. A writ used to determine the right of an individual to exercise authority, usually brought by the Attorney General to test a person's claim of right to hold public office.

REAL ESTATE — See **REAL PROPERTY**.

REAL PROPERTY — Land and whatever is erected or growing upon or affixed to the land. Also called “real estate” or “realty.”

REALTY — See **REAL PROPERTY**.

RECEIVER — A fiduciary appointed by the court to collect, manage, distribute and account for the assets of a person who is absent from the Commonwealth or who is otherwise unable to properly manage the assets of a business or an estate.

RECESS — A brief time set by the judge when those in court, including the jury, may be excused from the courtroom.

RECOGNIZANCE — See **PERSONAL RECOGNIZANCE**.

RECORD —

1. n. The word-for-word (verbatim) account by the official court reporter or an official audio tape of all proceedings in the courtroom.
2. v. To register a deed for real property in the Registry of Deeds.

RECORD ON APPEAL — The pleadings, motions, exhibits, orders or decrees filed in a case in the Trial Court, a copy of the docket entries, the findings of the trial judge and a transcript of the testimony taken in the case, forwarded to the appellate court when a case is appealed.

RECORDER — The Recorder maintains the records in the Land Court, and also hears and decides certain kinds of cases.

RECUSAL — See **DISQUALIFICATION**.

REDUCED FEE PANEL — A list of lawyers who may represent individuals at a lower cost than usual depending on the type of case and the income of the individual seeking representation.

REGISTER OF DEEDS — The elected county official responsible for maintaining the Registry of Deeds, where records of real property ownership are kept. Some counties are divided into parts, each having a Register of Deeds.

REGISTER OF PROBATE — The elected official who serves as clerk of a Probate and Family Court. The Register's office is referred to as the Registry of Probate. The case files in domestic relations, probate and other cases over which the Probate and Family Court has jurisdiction are kept there.

REGISTERED LAND — Real property the title to which has been certified by the Land Court in a case before that court, following procedures set by statute.

REGISTRY ABSTRACT — Most often, a summary of the court's finding on a moving violation. This term commonly refers to the form that the courts prepare and send to the Registry of Motor Vehicles to notify it of action on a case, including defaults.

REGISTRY OF DEEDS — See **REGISTER OF DEEDS**.

REGISTRY OF PROBATE — See **REGISTER OF PROBATE**.

REGULATION — A rule or order with the force of law issued by an administrative agency rather than by the Legislature.

RELEASE-ON-RECOGNIZANCE (ROR) — The pretrial release of an arrested person on a written promise to appear for trial at a later date, without a requirement that cash or surety be deposited with the court.

RELIEF — The assistance, damages or benefit that a plaintiff seeks from the court.

REMAINDER —

1. The remnant of an estate the distribution of which is not provided for in a will.
2. Assets held in a trust after all of the named beneficiaries have died.

REMAINDERMAN — An individual who is named, either personally or as a member of a group, to receive the remainder of an estate.

REMAND — To send a case back to the court from which it originated for further proceedings. Usually ordered by an appellate court with instructions as to what further proceedings are required in the lower court.

REMITTITUR — An order reducing a damages award by a jury that the judge considers excessive.

REMOVAL — The transfer of a case from one court to another court.

REMOVAL OF DEFAULT — The cancellation of a default judgment, restoring the case to its status before the defendant defaulted.

RENDITION — See **EXTRADITION**.

REPLEVIN — A civil action to recover or repossess property unlawfully taken or held by another and to obtain damages suffered as a result of the unlawful taking or holding of the property, now abolished in Massachusetts.

REPORTER —

1. A court official responsible for making a verbatim record of everything said in the courtroom during a hearing or trial, including the questions addressed to, and answers made by, witnesses, usually for the purpose of preparing a verbatim transcript, using manual shorthand, a stenotype machine or a stenomask. Also known as a “court reporter”, “court recorder”, or “court stenographer”.
2. A court official responsible for compiling, indexing and publishing the opinions of a court.

REQUEST FOR ADMISSIONS — A method of discovery by which one party lists certain facts related to a case and asks the other party to either admit or deny that the facts listed are true.

REQUEST FOR PRODUCTION OF DOCUMENTS — See **PRODUCTION OF DOCUMENTS**.

RES GESTAE — Latin for “things done.” In general, *res gestae* is an exception to the rule against admitting hearsay evidence.

1. A matter incidental to the main or principal fact, which helps explain that fact.
2. Acts and words which are so related to an occurrence as to appear to be evoked and prompted by it.

RES GESTAE WITNESS — A person taking part in and/or witnessing a crime who may have personal knowledge concerning the crime or the defendant’s possible involvement.

RES JUDICATA — Latin for “a thing adjudicated.” Refers to the principle that a party to a case is bound by a valid, final judgment in that case. A party cannot relitigate claims that were or could have been raised and decided in that case against the same opposing party in a new case. Also called “claim preclusion.”

RESCRIPT — The order given by the appellate court to the trial court telling the trial court what to do with the case. Common rescripts are “judgment affirmed”, “judgment reversed,” “judgment vacated,” etc.

RESCRIPT OPINION — A form of appellate opinion which consists of a brief order to the Trial Court and which does not identify the author of the opinion or the panel members.

RESIDENCE — The place where a person presently lives, but not necessarily the person’s permanent home.

RESIDUE — That part of an estate remaining after payment of all debts, charges and legacies.

RESPONDENT — A party against whom a motion or petition is filed.

RESTITUTION —

1. In criminal cases: Money that a convicted defendant is required to pay to the victim to compensate for damage suffered as a result of the crime.
2. In civil cases: The amount of money necessary to restore a party to the party's position prior to suffering the wrong, sometimes referred to as making the party "whole."

RESTRAINING ORDER — An order stopping a person from doing or continuing to do something that threatens or causes irreparable injury to another. In Massachusetts, the term is often used to refer to an order issued pursuant to G.L. c.209A to protect an individual from violence and abuse by an intimate partner or family member. A restraining order can be temporary or permanent.

RETAINER — A retainer is typically considered a down payment on the total bill for legal services. Retainers are typically used in hourly fee cases.

RETURN DAY — The specific day set by the court on which the parties to a case must appear in court for a hearing and/or respond to an event in the case in writing.

RETURN OF SERVICE — An endorsement or report by a sheriff, deputy sheriff or process server, recording the manner in which he or she served the process or order of the court.

REVERSE — To set aside, annul or vacate a judgment on appeal.

REVERSIBLE ERROR — See **PREJUDICIAL ERROR**.

REVOCATION — Generally, to take back something.

REVOCATION OF WILL — The annulment or rendering inoperative of a will by some subsequent act of the testator.

REVOCATION OF PROBATION — See **PROBATION REVOCATION**.

RIGHT OF REPRESENTATION — See **PER STIRPES**.

ROR — See **RELEASE ON RECOGNIZANCE**.

RULES OF STATUTORY CONSTRUCTION — Legal principles used by a court to decide what a law means. For example, the words used must be given their ordinary meaning and the statute must be read consistently with related laws. The goal is to carry out, as much as possible, the intent of the Legislature. There are many rules of statutory construction.

SAFE KEEPING OF WILL — A person who has written a will can, for a fee, deposit the will with the Probate and Family Court Department in the county in which the person lives until the person either dies or wishes to change the will.

SATISFACTION — A written acknowledgment of receipt of payment or performance of a judgment which, when filed with the court, discharges the obligation.

SATISFY A JUDGMENT — Pay the damages ordered as part of a judgment in a civil case.

SEALING OF RECORD OR FILE — A criminal or juvenile delinquency record which is closed and thereafter cannot be examined by anyone except by order of the court.

SEARCH WARRANT — A written order directing a police officer to search a specific place for specific evidence, issued upon a showing by the police of probable cause to believe that the object(s) sought will be found in the place(s) to be searched.

SECTION 35 COMMITMENT — A commitment made when a court determines that a person's alcohol or drug abuse is a danger to self or others and requires a safe and secure intervention. Family members, blood relatives, police officers and physicians can petition a court for this commitment.

SENTENCE — The punishment imposed following a conviction in a criminal proceeding.

SEPARATION — A judgment by a court that two married people may live separately while still remaining husband and wife, and declaring the rights and obligations of the parties while they are separated.

SEPARATION AGREEMENT — A contract between spouses who have separated which sets forth their agreement on issues relating to child custody, property division, child support, alimony, etc. This contract is usually submitted to the court by the parties to a divorce case, for approval by the court.

SEQUESTER — See **SEQUESTRATION OF WITNESSES, SEQUESTRATION OF JURY.**

SEQUESTRATION OF JURY — An order directing that a jury be isolated from contact with the public during a trial and/or during deliberations to prevent jurors from being improperly influenced by factors outside of the control of the court.

SEQUESTRATION OF WITNESSES — An order directing a witness to stay outside the courtroom and not discuss testimony with others until the witness is called to testify. Sequestration is designed to prevent witnesses from being influenced by the testimony of other witnesses.

SERVICE BY PUBLICATION — The service of process upon an absent or nonresident defendant by publishing the summons or other notice as a legal advertisement in a designated newspaper.

SERVICE OF PROCESS — The delivery of writs, orders or other documents directly to the party to whom they are addressed (in-hand service), or the leaving of such documents at the last and usual residence of that person, by a process server. In some limited circumstances, service may be made by mail or by publication of a notice in the newspaper.

SERVICE PLAN — A plan drawn up by the Department of Social Service describing the services to be provided to a family to resolve a crisis. Service plans are often introduced into evidence in termination of parental rights, care and protection and adoption cases.

SESSIONS CLERK — A clerk who works in the courtroom assisting the judge in running the court session.

SESSION LAW — A law passed by the legislature that is not of general application and is not included in the Massachusetts General Laws.

SETTLEMENT — The resolution of a case or dispute before going to trial.

SHARED CUSTODY — In a domestic relations proceeding, one or both of the following:

1. The children live with one parent part of the time and with the other parent part of the time (usually referred to as "joint physical custody"); and/or
2. Both parents share in making decisions on important issues dealing with the children (usually referred to as "shared legal custody").

SHERIFF — An elected county law enforcement officer who has authority to execute all lawful writs, process, and orders and to appoint deputies to act in the same capacity. The sheriff is also keeper of the jail.

SHOW CAUSE HEARING — A hearing conducted by a clerk-magistrate or judge in which a complainant in a criminal case, usually a police officer, is required to show sufficient facts to support the conclusion that there is probable cause to believe that a crime has been committed and that therefore a criminal complaint should be issued against a defendant.

SIMULTANEOUS INTERPRETATION — A process of converting spoken words from one language to another in which the interpreter converts the words spoken from language A to language B as they are being spoken, so that the speaker does not need to pause to wait for the interpretation to occur.

SINGLE JUSTICE — In addition to sitting in panels, justices of the Appeals Court and the Supreme Judicial Court sit alone in a “single justice session.” The single justice may review and decide a variety of cases, including interlocutory orders and orders for injunctive relief. Each Associate Justice sits as single justice for a month at a time.

SJC — See **SUPREME JUDICIAL COURT**.

SLANDER — Injury to a person's character or reputation by the spoken word.

SMALL CLAIMS CASE — A special process for resolving civil cases in which the amount of damages claimed usually does not exceed \$2,000.00 (as of the date of publication). Claims are heard initially by a clerk-magistrate or assistant clerk-magistrate, without a jury and usually without attorneys. The defendant may appeal the decision to a judge.

SOLDIERS AND SAILORS PETITION — A federal statute (the Soldiers and Sailors Civil Relief Act) gives certain protections to people in the military (including reservists on active duty) when someone wishes to foreclose a mortgage against them. A Soldiers and Sailors Petition can be filed in the Land Court or the Superior Court by the person wishing to foreclose to establish that the property owner is not in the military. That issue is the only matter which may be decided in the case.

SOLE CUSTODY — See **CHILD CUSTODY**.

SPECIAL ADMINISTRATOR/RIX — The person appointed temporarily by the court to preserve the assets of the estate until an administrator/rix or executor/rix is appointed. He or she is frequently appointed when there is a long delay in the appointment of the administrator/rix or executor/rix because of a will contest, or where action is needed immediately after death to preserve, protect or manage assets of the deceased.

SPECIFIC PERFORMANCE — An order directing a party to a contract who has breached its terms to do what the party contracted to do. Generally used when the thing or service contracted for is unique, such as real property, so that money damages for breach of contract would be inadequate.

SPENDTHRIFT — A person who by excessive drinking, gaming, idleness, or debauchery of any kind spends, wastes, or lessens his or her estate and exposes himself or herself or his or her family to want or suffering, or exposes the state to charges or expenses for the support of himself or herself or his or her family.

SPENDTHRIFT TRUST — A trust created to provide for a spendthrift while at the same time protecting the funds from his or her improvidence or incapacity.

SPOUSAL ELECTION — A surviving spouse's choice between accepting the provisions of a will or claiming instead the disposition of property provided for by statute.

SPOUSAL SUPPORT — A sum of money that a court orders paid by one spouse for support, aid, or maintenance of the other in a separation or divorce. An award of spousal support does not include child support. Also known as “alimony.”

SPOUSE — Gender neutral term for husband or wife.

STALKING — Willful repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel that way.

STANDARD OF REVIEW — The legal standard applied by an appellate court to decide whether the court or administrative agency whose ruling or decision is being reviewed should be reversed. Some typical standards:

1. Clear error: A trial judge's finding of fact will not be reversed in the absence of clear error, because those findings are based on the judge's assessment of the credibility of the witnesses who were seen and heard by the judge but not by the appellate court.
2. Abuse of discretion: A trial judge's judgment will not be reversed when it is reasonable, even though an appellate court might have ruled otherwise, since the ruling is a “judgment call” that is for the judge to make.
3. Error of law: A trial judge can be reversed for an error of law.

STANDING — A litigant with “standing” is one who has a legally protected interest in the litigation.

STARE DECISIS — See **PRECEDENT**.

STATE PRISON — A correctional facility (Massachusetts Correctional Institution or MCI, or Correctional Center) operated by the Department of Corrections. Only the Superior Court can sentence someone to state prison.

STATUS OFFENSE — An activity that would not be considered a violation of the law if committed by an adult, such as being a runaway, being truant from school, etc., but that may cause a minor to be brought before the Juvenile Court.

STATUTE OF FRAUDS — A legal doctrine or rule that certain types of contracts, such as real property sales agreements, must be in writing or they will not be enforced by the courts.

STATUTE OF LIMITATIONS —

1. In civil cases: A statutory time limit within which a civil case must be begun.
2. In criminal cases: A statutory time limit within which prosecution must be started.

STATUTES — Laws enacted by a legislature. In Massachusetts, state statutes are collected in the Massachusetts General Laws (MGL) or Massachusetts General Laws Annotated (MGLA). Federal statutes are found in the United States Code (USC) or United States Code Annotated (USCA).

STATUTORY CONSTRUCTION — See **RULES OF STATUTORY CONSTRUCTION**.

STAY — The suspension of a judicial proceeding by court order. For example, a stay pending appeal stops any proceeding or execution of any sentence or judgment until an appellate court has reviewed the matter.

STIP — See **STIPULATION**.

STIPULATION — An agreement between opposing parties on any matter relating to the proceedings, e.g., to extend the time to answer, to adjourn the trial date, to admit certain facts at the trial, etc. The stipulation may require court approval to be effective. Facts that are stipulated need not be proved by evidence at trial. Sometimes referred to as a “stip.”

SUA SPONTE — Latin for “on its own.” A court acts *sua sponte* when it takes action voluntarily, without first being requested to act by a party to a case.

SUBPOENA — Latin for “under penalty.” A writ or order to compel attendance by a witness or the production of documents in court or at a deposition, with a penalty for failure to do so.

SUBPOENA DUCES TECUM — See **DUCES TECUM**.

SUBROGATION — The substitution of one person in the place of another in connection with a legal right. Most commonly used in civil cases where an insurance company (subrogee) has paid its policy holder and is entitled to use the policy holder’s right to recover damages to seek reimbursement from the third party that caused the damage for which the insurance company paid.

SUBROGEE — See **SUBROGATION**.

SUBSTANCE ABUSE — As administratively defined by the Supreme Judicial Court, substance abuse is the “chronic and habitual ingestion of drugs or alcohol to the extent that (i) such use substantially injures a person’s health or substantially interferes with his or her social or economic functioning, or (ii) a person has lost the power of self-control over the use of drugs or alcohol. It is a chronic, relapsing disorder requiring ongoing rather than episodic intervention. It is predictable, progressive, symptomatic and treatable.” Supreme Judicial Court, *Standards on Substance Abuse*, Introduction (Adopted March 30, 1995).

SUBSTITUTED JUDGMENT HEARING — A hearing to determine whether a person is competent to make medical decisions, including a decision to reject medical treatment. If the court determines that the person is incompetent, the court will make a decision regarding medical treatment by substituting the court’s judgment for that of the incompetent person and determining what decision the incompetent person would make if competent.

SUCCESSOR — A person who replaces or follows another, taking over all functions, rights, and responsibilities.

SUCCESSOR EXECUTOR/RIX — The person specifically named in the will to continue the probate of the estate after the original executor/rix no longer holds his or her position, subject to appointment by the court.

SUCCESSOR PERSONAL REPRESENTATIVE — See **ADMINISTRATOR/RIX DE BONIS NON, FIDUCIARY**.

SUMMARY JUDGMENT — A pre-trial procedure which seeks to avoid an unnecessary civil trial by allowing one party to show that there is no genuine conflict regarding the facts of the case that must be determined by a judge or jury and that the law entitles that party to a favorable judgment.

SUMMARY JURY TRIAL — A dispute resolution process presided over by a neutral in which (a) the parties’ attorneys present a summary of the evidence and arguments they expect to offer at trial to a six-person jury chosen from the court’s jury pool, (b) the jury deliberates and returns a non-binding decision on the issues in dispute, (c) the attorneys may discuss with the jurors their reactions to the evidence and the reasons for their verdict and (d) the presiding neutral may be available to conduct a mediation with the parties.

SUMMARY PROCESS — The process by which a landlord terminates a tenancy and evicts or removes the tenant from rental property. Summary process cases are usually heard by a Housing Court or by a District Court and sometimes heard in the Superior Court when the rent sought is over \$25,000.

SUMMONS — A notice to a party stating that a case has been filed and directing that the person appear in court on a given date to answer the complaint, and that, should the party fail to file an answer, a default judgment will be entered against that party.

SUPERIOR COURT — The Superior Court is the Commonwealth's court of general jurisdiction and operates sessions in every county of the Commonwealth. The court hears major civil and criminal cases and has appellate jurisdiction over certain administrative agency proceedings.

SUPPLEMENTARY PROCESS — A civil procedure used by creditors to enforce a judgment against a debtor, in which the court determines whether the debtor has the ability to pay the judgment and, if so, issues a payment order.

SUPPORT ORDER — In a domestic relations proceeding, an order for payment of money to meet the ongoing financial needs of a child, spouse, or former spouse. Support may include health care and educational expenses.

SUPPRESS — See **MOTION TO SUPPRESS**.

SUPREME JUDICIAL COURT (SJC) — The highest appellate court in the Commonwealth of Massachusetts and the only "constitutional" court, that is, the only court established by the state constitution rather than by statute. The SJC has final appellate authority regarding the decisions of all lower courts, and it exercises general superintendence over the administration of the lower courts. The SJC has a chief justice and six associate justices who generally sit in panels of five to hear and decide cases. The SJC also runs a single justice session in which one justice, assigned on a rotating basis, hears certain types of appeals.

SURETY — A person or corporation who agrees to fulfill another person's financial obligation in the event the other person fails to fulfill it. The other person is known as the principal. A surety's obligation typically arises from the same contract that binds the principal.

SURRENDER — See **ADOPTION SURRENDER, PROBATION REVOCATION**.

TAKE — As used in probate law, to acquire title or to be entitled to an estate, such as when a person is entitled to "take" under a will.

TAKING —

1. The appropriation of privately owned property by the state for public use, also known as "eminent domain."
2. The appropriation of real property by a city or town because the owner has not paid real estate taxes on the property.

TEMPORARY EXECUTOR/RIX or ADMINISTRATOR/RIX — A fiduciary appointed to administer an estate pending the appointment of an executor/rix or administrator/rix.

TEMPORARY GUARDIAN — See **GUARDIAN**.

TEMPORARY ORDER — An order issued in the early stages of a domestic relations case to ensure that any children involved are cared for appropriately and that both parties have sufficient funds and other resources prior to a trial or agreement that results in a division of assets, payment of spousal support and/or child support, and custody and visitation arrangements.

TEMPORARY RESTRAINING ORDER — See **RESTRAINING ORDER, INJUNCTION, 209A**.

TENANT — A person who rents or occupies the real property of another for a temporary period.

TENANT-AT-WILL — A tenant who occupies rental property without a written lease, paying the landlord an agreed-upon rent. Unlike a tenancy under a lease, which terminates when the term of the lease terminates, a tenancy-at-will continues indefinitely until either the landlord or the tenant gives notice to the other party that the tenancy is being terminated.

TENANT-AT-SUFFERANCE — A tenant who has been ordered evicted by a court but who stays in the property temporarily. For example, a court may order the tenancy terminated and the tenant evicted but give the tenant thirty days to move out. During that thirty-day period, the tenant is a tenant-at-sufferance and is expected to pay for the use and occupancy of the premises. May also refer to a tenant who stays in the property after a lease ends.

TERMINATION OF PARENTAL RIGHTS — A proceeding to determine if a person's right to parent a child is to be terminated, making a child legally free for adoption or terminating the parent's right to notice of any custody proceedings involving the child. These cases are commonly referred to as "210 cases" after G.L. c. 210, §3, the statute that governs them.

TESTATE — Having left a will at death.

TESTATE SUCCESSION — Inheritance of a decedent's property under the direction of the decedent's will.

TESTATOR (MALE), TESTATRIX (FEMALE) — One who has made a will.

TESTIMONY — The statement of a witness made under the penalties of perjury which is offered as evidence.

THIRD-PARTY COMPLAINT — A procedure in a civil case which allows a defendant to implead, or bring in, another party who is or may be liable to the defendant to pay or help pay any judgment if the defendant is found liable in the case. The procedure avoids a separate action by the defendant against the third party by combining both cases in one.

TITLE —

1. Ownership of property. A person who owns property is said to have title to it.
2. A division of a code or collection of statutes or regulations. For example, the U.S. Code is divided into groups of statutes on a particular topic, each with a separate title.

TITLE IV-D — A federally-supported program for child support enforcement administered through the Department of Revenue's Child Support Enforcement Division.

TORT — An injury or wrong committed against the person or property of another, arising out of violation of a duty established by law rather than by contract. Tort cases are civil cases.

TRANSCRIPT — The verbatim (word-for-word) written record of proceedings in a trial or hearing.

TRANSLATOR — One who converts a written document from one language to another.

TRIAL — A hearing before a judge and/or a jury at which evidence is taken and witnesses examined with the aim of resolving the issues between the parties involved.

TRIAL COURT —

1. The court where a trial takes place, as opposed to an appellate court, which reviews the actions of the trial court to determine whether they were in compliance with the law.
2. In Massachusetts, the Trial Court is the umbrella organization that combines seven trial-level departments into a single administrative entity. The seven Massachusetts Trial Court Departments are the Boston Municipal Court Department, the District Court Department, the Superior Court Department, the Probate and Family Court Department, the Juvenile Court Department, the Housing Court Department and the Land Court Department.

TRIAL DE NOVO — See **DE NOVO**.

TRUE BILL — See **INDICTMENT**.

TRUST — A right to property, real or personal, held by one party (the trustee) for the benefit of another (the beneficiary).

TRUSTEE — The person legally responsible for holding the right to property established by a trust.

TRUSTEE PROCESS — A form of attachment in which the plaintiff/creditor seeks to secure property of the defendant/creditor which is held by a third party, such as a bank, in order to ensure that the property is available to satisfy a judgment.

UNCONTESTED — A case or motion which is not opposed.

UNDER ADVISEMENT — When a matter has been heard by a judge but the judge has not yet rendered a decision, the judge is said to have taken the matter “under advisement.”

UIFSA — See **UNIFORM INTERSTATE FAMILY SUPPORT ACT**.

UNIFORM INTERSTATE FAMILY SUPPORT ACT — A federal statute requiring all states to use similar procedures in child support actions that involve parents living in different states or on tribal lands.

U.S. CODE — The collection of federal statutes.

UNSATISFIED JUDGMENT — See **SATISFY A JUDGMENT**.

VACATE —

1. A vacate order requires one party to move out of a home shared with the other party. Often issued as part of a 209A order or in the course of a divorce.
2. An order is vacated when it is annulled or otherwise removed either by the issuing judge or by an appellate court.

VENDEE — A buyer; a person to whom something is sold.

VENDOR — A seller; a person who sells something.

VENIRE — Latin for “to come.” Technically, a writ summoning prospective jurors; popularly refers to the group of jurors summoned from which a jury is selected.

VENUE — The jurisdiction in which court proceedings may be instituted.

VERBATIM — See **TRANSCRIPT**.

VERDICT — A final decision by a judge or a jury.

VERIFICATION — A person's declaration under penalty of perjury that statements of fact in a document or pleading are true.

VERIFIED STATEMENT — A statement that contains verification by the party submitting it.

VICTIM-WITNESS ADVOCATE — An employee of the District Attorney's Office who, during the prosecution of a case, assists victims of crime and/or witnesses to crime.

VISITATION — The court-ordered right to spend specified amounts of time with a child.

VOIR DIRE — French for "to speak the truth." The preliminary examination of the qualifications and potential biases of prospective witnesses or jurors.

VOLUNTARY ADMINISTRATOR/RIX — The person informally appointed by the court to administer the estate of an intestate decedent whose probate assets consist entirely of personal property having a fair market value of not more than \$15,000, not including an automobile.

VOLUNTARY EXECUTOR/RIX — A person who is named as executor/rix in a will and is appointed to informally administer the decedent's assets which consists entirely of personal property having a fair market value of not more than \$15,000, not including an automobile.

WAGE ASSIGNMENT — See **GARNISHMENT**.

WAIVE, WAIVER — To give up a right, claim, or privilege.

WARD — A minor or legally incapacitated person who has been placed under the care of a guardian.

WARRANT — A court paper permitting law enforcement personnel to arrest a person or search a place. Kinds of warrants include arrest warrants, bench warrants, fugitive warrants, search warrants and warrants of apprehension.

WARRANT MANAGEMENT SYSTEM (WMS) — A computerized database maintained by the Trial Court containing all arrest and default warrants issued by the Trial Court. WMS can be accessed by individual courts and by law enforcement officers to determine whether a particular individual is wanted in any court in the Commonwealth.

WARRANT OF APPREHENSION — A warrant permitting the police to bring a person before the court if it is reasonable to believe that the person would not appear if summoned, and that any further delay would present an immediate danger to the physical well-being of the person. Usually issued in the context of mental health or substance abuse commitment proceedings.

WARRANT RECALL — A procedure for removing a cancelled warrant from the Warrant Management System to avoid repeated or mistaken arrests.

WIDOW (FEMALE), WIDOWER (MALE) — A person whose spouse has died and who has not remarried.

WIDOW'S ALLOWANCE — A portion of an estate that the widow may ask the court to advance her, before the estate is ready for distribution, for the care of herself and/or her children. The allowance may be made, at the request of the widow, only after the inventory is filed.

WILL — A written document disposing of a person's property at the time of death. A will includes any codicil.

WITH PREJUDICE — See **DISMISSAL**.

WITHDRAWAL OF APPEARANCE — A document filed by an attorney to indicate that he or she will no longer be the attorney of record representing a party to a case. In many situations, an attorney may not withdraw without permission of the court.

WITHOUT PREJUDICE — See **DISMISSAL**.

WITNESS — A person who gives testimony under oath as to what he or she has seen, heard or otherwise observed. An **EXPERT WITNESS** has special knowledge and qualifications in a particular subject area. Admission of expert testimony as evidence is complex and is determined by the judge.

WMS — See **WARRANT MANAGEMENT SYSTEM**.

WRIT — An order giving the authority to require the performance of a specific act.

YOUTHFUL OFFENDER — In Massachusetts, a person between the ages of fourteen and seventeen who has committed an offense that would be punishable by imprisonment in the state prison if the person were an adult and who has (a) previously been committed to the Department of Youth Services or (b) committed an offense which involves the infliction of or threat of serious bodily harm or (c) committed certain other offenses. A Youthful Offender may be subject to sentencing as an adult or as a juvenile. Often referred to as a “YO.”

YO — See **YOUTHFUL OFFENDER**.

1A DIVORCE — See **IRRETRIEVABLE BREAKDOWN**.

1B DIVORCE — See **IRRETRIEVABLE BREAKDOWN**.

10-DAY HEARING — A hearing that must be held within ten days after a court enters a 209A abuse prevention order *ex parte*, at which the defendant has an opportunity to be heard prior to a decision by the court whether to issue a further order.

30A APPEAL — The Superior Court review of an adjudicatory decision by an administrative agency pursuant to G.L. c.30A. Such appeals are based on the record of the proceeding before the administrative agency. No new evidence is permitted. The court has the authority to affirm, remand, vacate or reverse the agency’s decision. The Housing Court also has 30A jurisdiction in cases where it has subject matter jurisdiction.

58A HEARING — See **DANGEROUSNESS HEARING**.

72-HOUR HEARING — A court hearing required to be held within 72 hours after a court grants emergency custody to the Department of Social Services (or another agency or individual) in a care and protection case.

209A — G.L. c.209A is the Commonwealth’s abuse prevention statute, intended to protect people from domestic violence. It applies to “family or household members,” defined as people who are or were married to each other, are or were residing in the same household, are or were related by blood or marriage, have a child together, or are or have been in a “substantive dating or engagement relationship.” Under c.209A, the court can issue a civil restraining order requiring, *inter alia*, that the defendant refrain from abusing the victim, vacate the home, have no contact with the victim and turn all firearms and firearms identification cards in to local police. Although the order, often referred to as a “209A” or a “209A order,” is a civil order, violation of the no abuse, vacate, no contact and firearms provisions of the order is a crime. The District Court Department, the Boston Municipal Court Department, the Probate and Family Court Department and the Superior Court Department all have jurisdiction to issue orders under c.209A, although the Superior Court Department cannot issue orders to

people whose only connection to the batterer is a “substantive dating or engagement relationship.” An *ex parte* order may also be issued in an emergency situation when the courts are not open.

210 CASE — See **TERMINATION OF PARENTAL RIGHTS**.